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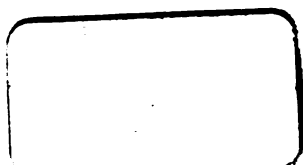
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**REPORTS OF CASES**

**UNDER THE**

**WORKMEN'S COMPENSATION ACT,**

**DETERMINED BY**

**COMMITTEES OF ARBITRATION, THE INDUSTRIAL  
ACCIDENT BOARD AND THE SUPREME  
JUDICIAL COURT.**

---

**JULY 1, 1912, TO JUNE 30, 1913, INCLUSIVE.**



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## INTRODUCTION.

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*Most Important Function of Board.* — Perhaps the most important of the many functions of the Industrial Accident Board is the formal hearing and decision of cases under the Massachusetts Workmen's Compensation Act. Reports of committees of arbitration formed under the act, and findings and decisions of the Board in cases which may be regarded as of value in indicating the interpretation given the different provisions of the statute, will be found in the pages which follow, and cover the year from July 1, 1912, to June 30, 1913, inclusive. Several decisions of the Supreme Judicial Court upon cases heard during the first year of the administration of the law are included in this volume, as well as a few of the more important findings of the Board during the time elapsing between June 30, 1913, and the date upon which the forms were closed. Many of the cases reported herein have been taken up to the Supreme Judicial Court on appeal, as indicated in the record, being subject to revision by that tribunal. Omitted cases, as shown by missing case numbers, are for the most part those which have been settled by agreement of the parties, usually through the mediation of a member of the Board in conference with employee and insurer. The expenses attendant upon formal hearings have been avoided by these conferences, the parties being brought together on common ground and their differences adjusted in accordance with the provisions of the act.

*Decisions which guide Board.* — The Supreme Judicial Court has handed down several decisions of moment to guide the Board in its administration of the act. The court has passed upon cases which brought into question the meaning of the words "average weekly wages," "personal injury arising out of and in the course of his employment," the extra-territorial effect of the act, the rights of widows, their own children and stepchildren, and of an employee who was acting as the agent

of his general employer at the time of the injury, to compensation under the statute.

*Striking References to Act by Supreme Court.*—The court makes many striking references to the Workmen's Compensation Act in the course of the several decisions rendered. For the accomplishment of the purposes of the statute, "a simple method is furnished operating without delay or unnecessary formality. . . . In one aspect a case under the act resembles an action at law, for it seeks ultimately the payment of money. Payments, however, in most instances are by instalments. In another aspect, it is akin to the specific performance of a contract, designed to cover the whole range of misfortunes likely to arise in the course of employment in a State with many and diversified industries." (Gould case below.) In another decision, in the Gillen case, the court refers to the "broad scope of the act and its comprehensive dealing with the whole subject," and states that "where words are used in one part of a statute in a definite sense it may be presumed, in the absence of a plain intent to the contrary, that they are used in the same sense in other places in the same act." In the McNicol case below the court says injuries are excluded "which cannot fairly be traced to the employment as a contributing proximate cause, and that the provisions of the English act as to the dependents entitled to payments are wholly different from those of our own act." The court states that "the act should be interpreted broadly in harmony with its main aim of providing support for those dependent upon a deceased employee" in the course of its decision in the Coakley case, below. In the Pigeon case below the court declares that the Workmen's Compensation Act in its practical operation affects large numbers of people, and that its declared purpose is the humane one of preventing industrial accidents and providing payments for employees injured in the course of employment. The word "court" may be "given a signification liberal enough to include the committee of arbitration and Industrial Accident Board as instituted by the act, and under all the circumstances should be given such construction."

*"Average Weekly Wages."*—The court ruled, in *Gillen v. Ocean Accident and Guarantee Corporation, Ltd.*, that the

phrase "average weekly wages," as used in the statute, "means all the wages which the employee receives in the course of a permanent employment," and that the employee is entitled to compensation based upon his earnings as a longshoreman, working for many employers in the course of a year. In connection with this case the court considered another phase of the average weekly wage question. Referring to the first portion of the definition of "average weekly wages" as stated in the act, the court says that "'average weekly wages' are there defined to mean 'earnings of the injured employee during the period of twelve calendar months immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted.' . . . While the language is not amplified, it refers to substantially uninterrupted work in a particular employment. . . . The basis is the earning capacity of the workman as shown by such employment." Where an employee has not been in the service of his employer for a year, his average weekly wages should be ascertained by "reference to the wages of others whose employment is substantially continuous."

*Assault by Intoxicated Fellow Employee.* — In *McNicol v. Employers' Liability Assurance Corporation, Ltd.*, the court held that the widow of an employee who received a personal injury by reason of an assault committed upon him by a fellow employee who was in the habit of drinking to intoxication, and who, when intoxicated, was quarrelsome and dangerous, and unsafe to be permitted to work with his fellow employees, — all of this being known to a person exercising superintendence, — was entitled to compensation, said personal injury arising out of and in the course of the employment. Rugg, C.J., states: —

It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words (personal injury arising out of and in the course of his employment) which shall accurately include all cases embraced within the act and with precision exclude those outside its terms. It is sufficient to say that an injury is received "in

the course of" the employment when it comes while the workman is doing the duty which he is employed to perform. It arises "out of" the employment when there is apparent to the rational mind upon consideration of all the circumstances a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work and not common to the neighborhood. It must be incidental to the character of the business and not independent of the relation of master and servant. It need not to have been foreseen or expected, but after the event it must appear to have had its origin in the risk connected with the employment and to have flowed from that source as a rational consequence. . . . The injury came while the deceased was doing the work for which he was hired. It was due to the act of an obviously intoxicated fellow workman, whose quarrelsome disposition and inebriated condition were well known to the foreman of the employer. A natural result of the employment of a peaceable workman in company with a choleric drunkard might have been found to be an attack by the latter upon his companion.

*McNicol Case distinguished.* — The McNicol case is distinguished from a stabbing by a drunken stranger, a felonious assault by a fellow workman, or rough sport or horseplay by companions who might have been expected to be at work.

*Decision rests upon Causal Connection between Injury and Employment Conditions.* — The honorable chief justice states: —

Although it may be that upon the facts here disclosed a liability on the part of the defendant for negligence at common law or under the Employers' Liability Act might have arisen, this decision does not rest upon that ground, but upon the causal connection between the injury of the deceased and the conditions under which the defendant required him to work.

*Widow entitled to Compensation.* — The court finds that the widow is entitled to the payment of the weekly compensation due under the act, the dependency of children being "conditioned upon the non-existence of a surviving dependent parent."

The court ruled, in *Gould v. American Mutual Liability Insurance Company*, that the act did not have extra-territorial effect, and that the employee, a citizen and resident of Massachusetts, whose contract of hire was made in this State, was not entitled to compensation for a personal injury received while in the employ of a corporation organized and with its usual place of business in Massachusetts. The court states:—

The question is whether the act governs the rights of parties touching injuries received outside the State. It may be assumed for the purpose of this judgment that it is within the power of the Legislature to give to the act the effect claimed for it by the employee. . . . The point to be decided is whether the language used in the act indicates a purpose to make its terms applicable to injuries received outside the State. This must be determined by a critical examination of the words of the statute in the light of its humane purpose. There is nothing which expressly states that the act governs the rights of the parties touching such injuries. This is significant. In the absence of unequivocal language to the contrary, it is not to be presumed that statutes respecting this relation are designed to control conduct or fix the rights of parties beyond the territorial limits of the State.

*Status of Child by First Wife after Death of Father.*—In the case of *Coakley v. Coakley*, the Supreme Judicial Court handed down a decision of unusual interest. Four children and a widow survived the deceased employee, one of the children being by the first wife of the deceased. The court ruled that the stepchild and the widow share equally the compensation due under the statute, the stepchild, as well as the widow, being conclusively presumed to be wholly dependent for support upon the employee, “there being no surviving dependent parent” within the meaning of section 7 (c), Part II., of the act.

*Injury to Teamster, loaned to Another, subject to Control of General Employer, covered by Act.*—The Supreme Judicial Court held in the case of *Pigeon v. Employers’ Liability Assurance Corporation, Ltd.*, that a teamster who had been let by his general employer into the service of another was subject to the control, and therefore is the agent, of his general employer as to the care and management of the horse and vehicle; and, the injury occurring while the teamster was driving the horse to the watering trough, compensation was awarded the widow.

*Finding of Board on Same Footing as that of a Judge or Jury.* — In this latter case the court disposed of the point raised by the insurer, that the finding that the employee, Pigeon, was in the employ of Shaw, his general employer, at the time of the injury was not warranted by the evidence, ruling that "the finding stands upon the same footing as the finding of a judge or as a verdict of a jury. It is not to be set aside if there is any evidence upon which it can rest."

*Admissibility of Evidence.* — The insurer raised a question as to the admissibility of evidence received at the hearing before the committee of arbitration. A witness was permitted to testify to the declaration of the deceased employee made just before his injury, in substance, that he intended to feed and water his horse. The objection was based upon the claim that the committee of arbitration was not a "court" and that this evidence was incompetent, under R. L., chapter 175, section 66.

*Word "Court" applies to Committee of Arbitration and Board.* — RUGG, C.J., states: "The word 'court' has been used in statutes with a broader significance than including simply judicial officers. (See *Aldrich v. Aldrich*, 8 Met. 102, 106.) It may be given a signification liberal enough to include the committee of arbitration and Industrial Accident Board as instituted by the act, and under all the circumstances should be given such construction."

*Compensation conditional upon Occurrence of Personal Injury.* — "If an employee . . . receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury." (Section 1, Part II., of the act.)

*"Personal Injury," as defined by Board.* — The Industrial Accident Board has defined "personal injury," as used in the Workmen's Compensation Act, to be "any injury or damage or harm or disease which arises out of and in the course of the employment which causes incapacity for work and takes from the employee his ability to earn wages, the Act providing for the payment of compensation 'while the incapacity for work resulting from the injury is total,' based upon half the average



weekly wages of the employee, and 'while the incapacity for work resulting from the injury is partial,' based upon 'one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter,' thus making it clear that the law was intended to provide for the payment of compensation for a 'personal injury' which causes incapacity for work."

*Injury results from Quarrel.* — It was held, in the first case heard under the act, that a workman who was injured as a result of an encounter with another workman, following a quarrel of words, was not entitled to compensation, the injury not arising out of and in the course of the employment. (*Gorman v. Fidelity and Casualty Company of New York.*)

*Exposure in Leaky Boat causes Pneumonia.* — An employee got his feet wet in a leaky boat which was furnished by his employer, and pneumonia developed as an after effect of the injury. Held, in *Stone v. Travelers Insurance Company*, that this was a personal injury under the statute.

*Incapacity for Work due to Lead Poisoning.* — A paint-grinder, after many years, became physiologically unable to withstand the influence of the poison, due to lead, constantly introduced into his system during his employment since July 1, 1912, the result being shown in his loss of weight and other symptoms, culminating in a condition of secondary anæmia, which brought about his inability to work and caused him to be disabled since March 13, 1913. Held, in *Johnson v. London Guarantee and Accident Company, Ltd.*,<sup>1</sup> that this was a personal injury.

*Employee injured on Common Stairway.* — The right of an employee who was injured while leaving her place of employment by means of a common stairway was decided by the Board in the case of *Sundine v. London Guarantee and Accident Company, Ltd.*,<sup>1</sup> it being held that it was a necessary incident of the employment to use the flight of stairs and that the injury therefore arose out of and in the course of the employment.

*Blindness due to Inhalation of Noxious Gases.* — In the case of *Hurle v. American Mutual Liability Insurance Company*,<sup>1</sup> it

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<sup>1</sup> Appealed to Supreme Judicial Court.

was held that the employee, who was suffering from optic neuritis, caused by noxious gases and resulting in total loss of vision, was entitled to compensation, this being a personal injury under the act.

*Lobar Pneumonia, due to Cold and Exposure.* — In *Milliken v. Travelers Insurance Company*,<sup>1</sup> it was held that the widow of an employee whose death was caused by lobar pneumonia, following cold and exposure, was entitled to compensation, this being a personal injury.

*Fall of Heavy Wheel Proximate Cause of Death.* — So, in the case of *Welch v. Employers' Liability Assurance Corporation, Ltd.*, it was held that the death of the employee was due to a personal injury arising out of and in the course of the employment, the employee having had chronic valvular disease of the heart, the proximate cause of death being the shock caused by the fall of a heavy wheel upon him.

*Electric Shock causes Paralysis.* — In *Milliken v. United States Fidelity and Guaranty Company*, the facts developed at the hearing showed that the employee, a foreman carpenter, received an electric shock which threw him against his bench with such violence that it caused a sudden and unusual acceleration, force and pressure in the action of the heart so that paralysis resulted, and it was held that this was a personal injury.

*Employee found Unconscious on Side of Road.* — A plumber's assistant, having completed his work at the home of a customer, four miles away from his employer's shop, started homeward, driving along the State highway. He was seen by a friend, at about 5 o'clock, and five minutes later was found lying by the side of the road, unconscious. He was taken to a hospital, where a cut was noted on the employee's head, and other marks were discovered. An operation was performed and the employee died. Held, in *Sanderson v. Globe Indemnity Company*,<sup>1</sup> that this was a personal injury, and the widow was awarded compensation.

*Ether Pneumonia, following Operation.* — In *Raymond v. United States Casualty Company* it was held that ether pneumonia, following an operation necessitated by the employee's

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<sup>1</sup> Appealed to Supreme Judicial Court.

injury, was the immediate proximate cause of death, and that the widow was entitled to compensation.

*Epileptic Fit causes Fall.* — Held, in *Driscoll v. Employers' Liability Assurance Corporation, Ltd.*, that the dependent mother of an employee who, following an epileptic fit, fell from his wagon and fractured his skull, was entitled to compensation.

*Death by Drowning.* — In *Booth v. Ætna Life Insurance Company* the employee, a boatman, fell overboard, and it was held to be a personal injury, the widow being awarded compensation.

*Injury causes Tubercular Meningitis.* — A furniture polisher, as reported in *Black v. Travelers Insurance Company*, received an injury to his ankle which developed into tubercular meningitis several months later, medical experts stating that local traumatism — that is, the injury, the precursor of local tuberculosis — was a predisposing cause. Held, that the widow was entitled to compensation.

*Causal Connection between Pneumonia and Chill lacking.* — It was held, in *Waiswell v. General Accident Assurance Corporation, Ltd.*, that there was no causal connection between the chill which the employee received and the pneumonia from which he died.

*Employee falls inertly from Wagon.* — The driver of a coal wagon was about to drive on the scales to obtain the weight of his load of coal, when he fell inertly to the ground, death being due to natural causes. Held, that this was not a personal injury. (*Lewis v. Globe Indemnity Company.*)

*Death, following Strain and Subsequent Operation.* — A carpenter strained himself moving a heavy radiator and was afterwards operated upon, death, caused by appendicitis and intestinal obstruction, supervening. Held, that the widow was entitled to compensation. (*McGuigan v. Maryland Casualty Company.*)

*Injury while riding to Work.* — In *Andrews v. Travelers Insurance Company*,<sup>1</sup> the employee, a motorman, received an injury while riding to work on a car which was used for the transportation of mail. It was necessary that he assist in unloading the mail in order to get to work on time, and this

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<sup>1</sup> Appealed to Supreme Judicial Court.

had been his custom for four years prior to the injury. His day's pay began at 5.30 o'clock, whether his car left the barn or not. The mail car was late and the injury occurred at 5.48 o'clock. Held, that the injury arose out of and in the course of his employment.

*Causal Connection lacking.* — No causal connection was found between the kick administered by a horse in July and death which followed in October, in the case of *Boyd v. Travelers Insurance Company*, and the claim of the widow was dismissed.

*Neurosis causes Incapacity for Work.* — In *Lata v. American Mutual Liability Insurance Company* it was held that the employee was entitled to compensation on account of incapacity for work due to neurosis following an injury.

*Death not due to Lead Poisoning.* — The claim of the widow, in the case of *Baiona v. Employers' Liability Assurance Corporation, Ltd.*, that her husband's death was caused by lead poisoning arising out of and in the course of his employment, was dismissed, the evidence showing that the paint furnished by his employers contained only a small quantity of lead, and that only in the form of lead sulphate, which does not cause plumbism, or lead poisoning.

*Injury during Lunch Time.* — The employee was in charge of a crew of four men, whose united work completed the lasting of a shoe. These employees began work without regard to the regular opening time of the factory and ate their lunch in the factory at a time when most convenient to them. Having finished his lunch, he was in the act of stepping down from the stool upon which he was seated when he fell. Held, that he was entitled to compensation. (*Crouch v. Massachusetts Employees Insurance Association.*)

*Transportation to Work an Implied Term of the Contract.* — An employee was injured while being transported to his place of employment, and it was held that it was an implied term of the contract of service to so transport him. (*Gilbert v. Employers' Liability Assurance Corporation, Ltd.*)

*Salesman on Way to Home of Customer.* — In the case of *Gaffney v. Travelers Insurance Company* it was held that an injury received by a salesman en route to the home of a

prospective customer arose out of and in the course of his employment.

*Serious and Willful Misconduct of Employee.* — “If the employee is injured by reason of his serious and willful misconduct, he shall not receive compensation.” (Section 2, Part II.)

*Intoxication causes Fatal Injury.* — In *Lee v. Fidelity and Casualty Company of New York*, it was held that the alleged dependent was not entitled to compensation, because the injury to the employee was caused by his intoxicated condition and by his attempting to step around on the roof in an endeavor to show to his employer that he was not intoxicated.

*Fall, causing Death, results from Intoxication.* — So, in *Truesdale v. Employers' Liability Assurance Corporation, Ltd.*, it was held that the widow of the employee, who died as a result of his injuries, was not entitled to compensation. It was found that the employee was intoxicated at the time of the injury, and as a result of this intoxication was lacking in control of and ability to manage himself, and that he would not have fallen and been fatally injured but for this condition.

*Employee fails to use Certain Safeguards.* — The failure of an employee, as reported in the case of *Cochran v. Contractors Mutual Liability Insurance Company*, to make use of certain steel guys while at work on a steel tower, was held not to be serious and willful misconduct, it being shown that a sudden and unexpected gust of wind caused the collapse of the tower.

*Rule not enforced.* — An employee who failed to make use of goggles, in accordance with a printed rule which was posted in an inconspicuous place, said rule not being enforced, however, was held not to have been injured by reason of his own serious and willful misconduct. (*McClelland v. Massachusetts Employees Insurance Association.*)

*Serious and Willful Misconduct of Employer.* — “If the employee is injured by reason of the serious and willful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence the amounts of compensation hereinafter provided shall be doubled.” (Section 3, Part II.)

*Employee required to operate Machine known to be in Dangerous Condition.* — In *Allen v. Globe Indemnity Company* it was

held that the employee was injured by reason of the serious and willful misconduct of a person exercising superintendence, the employee being required to operate a machine which was known to be in a dangerous condition, the injury following as a matter of course.

*Cave-in causes Injury.* — An employee who was injured by reason of a cave-in claimed double compensation, the evidence showing that the upper crust of the sand bank was cut at regular intervals, this being the only practical way to prevent a cave-in. It appeared that it was customary to have men on hand whose duty it was to perform this work, and that only through an error in human calculation was the overhanging crust allowed to remain for a sufficient time to cause the injury. Held, that this was not an injury due to serious and willful misconduct on the part of the employer. (*Devine v. Contractors Mutual Liability Insurance Company.*)

*Dependency where Death results from the Injury.* — "If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury." (Section 6, Part II.)

*"Conclusively presumed to be Wholly Dependent."* — The act expressly provides that the following persons are conclusively presumed to be wholly dependent for support upon a deceased employee: a wife upon a husband with whom she lives at the time of his death; a husband upon a wife with whom he lives at the time of her death; a child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there

being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

*"All Other Cases of Dependency."* — All other cases of dependency shall be determined in accordance with the facts, as at the time of the injury. If there is more than one person wholly dependent, the death benefit shall be divided equally, persons partly dependent receiving nothing; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them.

*Many Total Dependency Cases reported.* — Many cases are reported covering awards to persons conclusively presumed to be wholly dependent.

*Board not to be deducted.* — The Industrial Accident Board held, in the case of *Murphy v. American Mutual Liability Insurance Company*,<sup>1</sup> that the father, who was a partial dependent of his son, receiving all his wages, was entitled to 100 per cent. of the minimum compensation provided by the statute, that is, to the payment of \$4 a week for a period of three hundred weeks. This case has been taken to the Supreme Judicial Court, the question at issue being whether the expense of the son's maintenance should be deducted from the amount contributed by him to his father when arriving at the amount due under the act.

*Totally Dependent, although receiving only Portion of Wages.* — In *Smith v. Massachusetts Employees Insurance Association* it was held that the dependent mother, who received from her son an average weekly contribution of \$5 from his average weekly wage of \$13.65, was entitled to a weekly compensation of \$6.83, being in fact wholly dependent upon her son for support.

*Compensation awarded Widow living apart but not legally separated from Husband. He had promised to support Widow and Child.* — The Board held that a widow, not living with her husband at the time of the injury, was entitled to compensation as a full dependent, under the following circumstances: she and her husband had not lived together since July, 1911, the injury occurring July 1, 1912. The evidence indicated

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<sup>1</sup> Appealed to Supreme Judicial Court.

that there had been a quarrel; that she left him; that he came and asked her to return; that he had given her money when she left for Nova Scotia, telling her he would support her and the child; that he was planning to return in September and that there had never been any talk of legal separation or divorce. (*Forsell v. Massachusetts Employees Insurance Association*.<sup>1</sup>)

*Widow living apart from Husband but receiving Support.* — A widow living apart but receiving support from her husband at the time of his injury, was awarded compensation. (*Archambault v. London Guarantee and Accident Company, Ltd.*)

*Widow not receiving Support. Child receiving Support. Child a Partial Dependent.* — A widow separated from her husband and not receiving any support from him was held not to be a dependent. Their child, living with her mother, and receiving an average of \$2 a week, was held to be partially dependent to the extent of this contribution by her father. (*Bentley v. Massachusetts Employees Insurance Association*.<sup>1</sup>)

*Incapacity for Work.* — A number of cases are reported, covering the payment of compensation under sections 9 and 10, Part II., of the act. These sections provide that the injured employee shall receive one-half his average weekly wages during his total incapacity for work, but not more than \$10 nor less than \$4 a week for a period not to exceed five hundred weeks, the maximum payment provided being \$3,000. For partial incapacity, provision is made for the payment of one-half the difference between the average weekly wages which the employee earned before the injury and the average weekly wages which he is able to earn thereafter, but not more than \$10 a week for a period not to exceed three hundred weeks from the date of the injury.

*Additional Compensation.* — Section 11, Part II., provides that, in case of certain specified injuries, "the amounts herein-after named shall be paid, in addition to all other compensation." Thus, if an employee receives an injury specified in this section he is entitled to a weekly payment on account of any incapacity which may result from this injury, and to the additional weekly payments named in said section.

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<sup>1</sup> Appealed to Supreme Judicial Court.



*Right to postpone Payment of Compensation denied.* — The right of an insurer to postpone the payment of "additional" compensation, pending the result of an operation for the restoration of the vision to an injured eye, came up in the case of *Bronzetti v. Employers' Liability Assurance Corporation, Ltd.*, and it was held that the insurer did not have this right, compensation being ordered paid in accordance with the section "for a period of fifty weeks," dating from the day of the injury.

*Injury to Eye makes it impossible to use Correcting Lens and obtain Simultaneous Vision.* — Section 11 (b), Part II., provides for the payment of an additional weekly compensation of half wages for a period of fifty weeks for "the reduction to one-tenth of normal vision in either eye with glasses." In *Latak v. Employers' Liability Assurance Corporation, Ltd.*, the employee received an injury which necessitated an operation for the removal of the lens of the left eye. By reason of the removal of the lens the vision became so blurred and its image out of alignment with the uninjured eye that the employee got no more vision, when wearing glasses, in the injured eye than if he were not wearing glasses. The operated eye, with a correcting glass, gave him a vision of four-tenths of normal; without a glass, three two-hundredths of normal. The weight of the medical evidence showed that this vision of four-tenths of normal was only practicable in the event of the employee losing his sound eye, and that it was impossible to wear a correcting lens and obtain simultaneous vision with the other eye. Held, that the vision of the employee, with the use of glasses in the injured eye, is three two-hundredths of the normal, and additional compensation is awarded.

*Common Law or Compensation.* — An employee may not claim his right of action at common law, and later claim under the statute.

*Independent Contractor.* — In *Cheevers v. Fidelity and Deposit Company of Maryland*<sup>1</sup> it was held that an independent contractor — that is, a person who was injured while driving his own team, although working for a coal dealer — was not entitled to compensation.

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<sup>1</sup> Appealed to Supreme Judicial Court.

*Letter does not constitute an Election to proceed.* — An employee, through his counsel, as reported in *McGaffigan v. Fidelity and Deposit Company of Maryland*, sent a letter to the Boston Elevated Railway Company, claiming damages on account of a personal injury caused by the negligence of one of its employees, and filed a claim for compensation with the Industrial Accident Board a day later. Suit was subsequently brought, the court dismissing the action on the ground that it had no jurisdiction. Afterwards the employee requested a hearing before a committee of arbitration to decide his claim under the statute. Held, that the letter to the Boston Elevated was not an election to proceed, and that the employee is entitled to compensation under the act.

*Casual Employment claimed in Case of Employment of Waiter to serve at Regular Occupation at a Banquet.* — A question of "casual employment" was raised in the case of *Gaynor v. Standard Accident Insurance Company*.<sup>1</sup> The employers, a firm of caterers, did not have any regular waiters in their employ, engaging men who followed that occupation regularly, as the occasion arose. While serving in his usual capacity as a waiter at a banquet, the employee received a personal injury from which he died. Held, that his employment was not casual and that his widow was entitled to compensation.

*Question of Casual Employment.* — The same question was raised in the case of an employee who had been informed that he "might get through to-night, you might not for a week, or two or three days," and it was held that he was not a casual employee. (*Grogan v. Frankfort General Insurance Company*.)

*Signing of Release by Employee does not deprive Widow of Right to Compensation.* — The Industrial Accident Board held, in the case of *Cripps v. Aetna Life Insurance Company*,<sup>1</sup> that the right of a widow to compensation was entirely separate from that of her husband, and that the signing of a release at common law by him, prior to his death, does not operate to deprive her of her claim to compensation under the act.

*Impartial Physicians assist in obtaining Necessary Medical Facts.* — Impartial physicians have been called upon by the Board, as shown in many cases reported, and have been of

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<sup>1</sup> Appealed to Supreme Judicial Court.

great assistance to the members in aiding them in coming to a decision in cases where the medical facts were in dispute.

*Care taken by Members of Board to ascertain Exact Facts.* — The care taken by members of the Board to ascertain the exact facts is shown in many of the cases; as, for example, in the case of *Nelson v. Employers' Liability Assurance Corporation, Ltd.*, in which the evidence introduced at the morning hearing before the committee of arbitration showed that the employee was clearly not entitled to compensation. A trip down the harbor, in a tug furnished at the request of the insurer by the employing corporation, and a visit to fellow employees working on several dredgers, proved the truth of the employee's claim, and compensation was accordingly awarded.

*Average Weekly Wages of Employee who worked only a Short Time.* — In *Regan v. Travelers Insurance Company* the average weekly wages of the employee were determined by obtaining a statement of the wages earned by a fellow employee, equally competent, who was "employed by the same employer, in the same grade." This was necessary on account of the shortness of time during which the claimant had been working for her employer.

*No Right to deduct Additional Compensation.* — In *Nichols v. London Guarantee and Accident Company, Ltd.*,<sup>1</sup> it was held that the insurer did not have the right to deduct from the compensation due the widow the additional compensation paid the employee before death on account of the "loss by severance" of a finger.

*Full Reports follow.* — Full reports of all the cases referred to in this introduction, as well as the reports of many other interesting cases, will be found in the pages which follow.

#### INDUSTRIAL ACCIDENT BOARD,

JAMES B. CARROLL, *Chairman.*

DUDLEY M. HOLMAN.

DAVID T. DICKINSON.

EDW. F. MCSWEENEY.

JOSEPH A. PARKS.

ROBERT E. GRANDFIELD, *Secretary.*

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<sup>1</sup> Appealed to Supreme Judicial Court.



**The Commonwealth of Massachusetts.**

**INDUSTRIAL ACCIDENT BOARD.**

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**REPORTS OF CASES UNDER THE WORKMEN'S COMPEN-  
SATION ACT, JULY 1, 1912, TO JUNE 30, 1913,  
INCLUSIVE.**

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**CASE No. 1.**

**JOHN GORMAN.** *Employee.*

**COUGHLIN & SHIELDS COMPANY,** *Employer.*

**FIDELITY AND CASUALTY COMPANY OF NEW YORK,** *Insurer.*

**EMPLOYEE INJURED AS A RESULT OF A PERSONAL QUARREL  
NOT ENTITLED TO COMPENSATION.**

An employee who was injured as a result of a personal encounter with another employee, following a quarrel of words, which, it was shown by the evidence, had no relation to the employment, claimed compensation.

*Held*, that this was not an injury arising out of and in the course of his employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Gorman v. Fidelity and Casualty Company of New York, this being case No. 1 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, John L. Donovan of Boston and George Warner Buck of Boston, heard the parties and their witnesses on Aug. 19, 1912, at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass. The employee was represented by Charles H. Cronin, Esq., and the insurer by Cyrus Brewer, Esq. The evidence submitted was substantially as follows: —

John Gorman, the employee, while in the employment of Coughlin & Shields Company, and while at work for them on the afternoon of July 11, in the subway on Winter Street in Boston, was severely injured in the left eye. The Coughlin &

Shields Company were the contractors for a portion of the excavating in said subway, and at the time of the injury to Gorman they had sublet a portion of their work to Soley & Blair, Inc.; and at the time of the injury, Soley & Blair, Inc., were doing the shoring up, this work being a part of the work which they were to do under their contract with Coughlin & Shields Company.

Hayward George, at the time of the injury to Gorman, was in the employ of Soley & Blair, Inc., and was working in the subway, near one of the pipes of which Gorman had charge. Hayward George was a driller, and for some time previous to the assault on Gorman, and during the quarrel which preceded the actual assault, was engaged in drilling certain rocks in the subway, assisted by a fellow workman, Ernest Cox. Gorman performed his work under the direct supervision of John A. Costello and George under the supervision of Martin T. Whalen. W. H. Gibson was a fellow workman of Gorman. The sworn testimony of all these witnesses was heard by the committee of arbitration.

Gorman testified that he received the injury to his eye while protecting the pipe in question, but neither of his witnesses, Gibson nor Costello, could corroborate him. George testified that he had not tampered in any way with the pipe, and that the assault was the termination of a wordy quarrel in which insulting epithets passed between himself and Gorman. As a result of the anger thus aroused, after a quarrel of twenty minutes or more in duration, he had leaped over the beams which separated him from Gorman, administering one blow which had caused serious injury to Gorman's sight. His fellow workman, Cox, corroborated him as to the quarrel and its duration, and George's foreman, Whalen, corroborated George as to the remark which led to the blow, but not as to time.

Upon the evidence as submitted the committee find that the employee did receive an injury, the preponderance of the testimony proving conclusively that it was a blow from the fist of a fellow workman, nothing in the evidence established the fact, which seems to be necessary to the support of the employee's claim, that the injury arose by reason of, and was incident to, his employment. In fact, it was established that the injury

was done by another workman in the course of a dispute and outside the scope of their employment.

Neither by intent nor language does the act under which this hearing is called afford compensation for an injury received in such a manner. The framers and the Legislature passing upon it intended only to recompense employees who received personal injuries "arising out of and in the course of" their employment, and the committee cannot undertake to bring the matter in hearing within the clearly expressed meaning of the statute.

The framers of the act, having in mind the advantage which must necessarily result from following such a course, borrowed many of the important phrases used in the statute from the English Workmen's Compensation Act. Among the most important of these is the expression "arising out of and in the course of," having relations to the employment of the injured person.

Thus, the interpretation given by the English courts to this phrase becomes of importance, though not controlling, in deciding as to the merits of the employee's claim. The facts heard in the present hearing are almost parallel with the case of *Armitage v. Lancashire & Yorkshire Railway Company*, before Collins, M.R., Mathew and Cozens-Hardy, L.JJ., 86 L. T. 883. In that case the applicant, who was an apprentice, was at work in a carriage shop where a number of other employees were engaged. One of the employees while "larking" pushed another employee into a pit. The latter, in anger, threw a piece of iron at him. The iron missed the employee aimed at and hit the applicant, injuring his eye so seriously that it had to be removed. In this case there was no contention that the injured employee was not performing his duty. In fact, it was conclusively proved that he was attending strictly to his employment when the piece of iron struck him. The county court judge found that the accident arose out of and in the course of his employment. On appeal, however, it was decided unanimously that "an act done by some one who happens to be in the same employment, which has no relation to that employment, but was a wrongful act and was intended to be a wrongful act against another person in the same em-

ployment, is not within the scope of the employment as a part of the risks of the employment."

So, in Gorman's case, it cannot be successfully maintained that an act by George, which had no relation to their employment, to wit, an assault provoked, as the facts proved, by a quarrel of words, is within the scope of the employment as part of the work or risks of the employment. We therefore decide that the injury did not arise out of and in the course of the applicant's employment, and that the Workmen's Compensation Act does not provide compensation for the injury sustained.

JOSEPH A. PARKS.

GEORGE W. BUCK.

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CASE No. 2.

JACOB TISHLER, *Employee.*

EIGNER & LIPPITT, *Subscribers.*

JACOB LOITHERSTEIN, *Employer and Independent Contractor.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

EMPLOYEE OF INDEPENDENT CONTRACTOR NOT INSURED ENTITLED TO COMPENSATION FROM INSURER OF MAIN CONTRACTOR.

A carpenter in the employ of an independent contractor received an injury which caused the loss of the sight in one eye. He filed a claim for compensation against the insurer, covering the liability of the main contractor under the Workmen's Compensation Act.

*Held*, that the employee was entitled to compensation under section 17, Part II., of the act, as claimed.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jacob Tishler v. Frankfort General Insurance Company, this being case No. 2 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of Taunton, chairman, Hyman E. Slobodkin of Malden, and Horace G. Pender of Needham, heard the parties and their witnesses on August 20, September 5, September 11 and Sep-



tember 17. The employee was represented by Joseph S. Spencer, Esq., and the insurer by H. R. Bygrave, Esq. The evidence submitted was substantially as follows: —

Jacob Tishler, the employee, while working as a carpenter in the employ of Jacob Loitherstein, an independent contractor, on July 9, 1912, in the erection of a building in Lynn, received a personal injury arising out of and in the course of his said employment. Loitherstein, the independent contractor, was not insured as a subscriber at the time the injury was received by said employee. (See finding of arbitration committee in case of Tishler, employee, and Fidelity and Casualty Company, alleged insurer.)

Mr. J. J. Lippitt, of the firm of Eigner & Lippitt, subscribers as aforesaid, testified on direct examination that he was a partner with J. Eigner in the construction of the building at Lynn in which the employee was injured; that he was improving this property by building an apartment house thereon; that his business was real estate, — buying and selling; that he had never been a carpenter, a mason or a contractor on a job; that he had his work done on this job by contracts in writing; and that he had a contract with Loitherstein to do or furnish the carpenter work, that is, the labor only, for \$6,650; that he gave no orders or directions as to the details of the carpenter work or masonry; that the only help he himself had on the building was a watchman, who did work of cleaning up, lighting lanterns, etc. In cross-examination Lippitt testified that his regular business was improving real estate, buying land that was undeveloped and developing it; that he had been in this business of developing real estate for about one year; that his regular business was to see to it that buildings were built on real estate; that he sometimes sold real estate without developing it; that he had no other business than this, as above described; that in carrying on his business he had to employ other contractors, not being a contractor or builder himself; that he bought the brick, lumber and other materials for this building himself, and was usually present eight hours a day as the work went on; that he had posted notices saying that he had insured under the provisions of the Workmen's Compensation Act.

The evidence showed that Tishler's injuries had resulted in a total incapacity for work since the time of receiving them, and in addition thereto a reduction to one-tenth of normal vision, with glasses, in one eye; that one-half his average weekly wages amounted to \$7.56, and that said injuries necessitated medical services during the first two weeks after the injury amounting to \$47.50, for which the employee had contracted.

The committee finds upon the evidence that the contract entered into between Eigner & Lippitt, subscribers, and Jacob Loitherstein was to do said subscribers' work, and was part of the business carried on by the subscribers, and not merely ancillary or incidental thereto; and that said employee was injured while in the performance of said work, arising out of and in the course of his employment; that a compensation is due him of \$7.56 per week from said Frankfort General Insurance Company beginning on the fifteenth day after the injury, viz., July 24, 1912, during said total incapacity, as provided in said act, and a like sum per week, in addition, by reason of the reduction of vision, for a period of fifty weeks from the date of the injury, viz., July 9, 1912; and \$47.50 for medical services expended or contracted for.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.  
HYMAN E. SLOBODKIN.

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CASE No. 3.

JACOB TISHLER, *Employee.*

JACOB LOITHERSTEIN, INDEPENDENT CONTRACTOR, *Employer.*

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Alleged Insurer.*

PRELIMINARY TALK CONCERNING INSURANCE DOES NOT CONSTITUTE INSURANCE; ORAL OR WRITTEN AGREEMENT NECESSARY.

A carpenter in the employ of an independent contractor received an injury, and his employer claimed that he was covered by insurance under the statute. The evidence showed that an insurance broker informed him that he was

covered as of July 3, 1912, the injury occurring July 9, 1912. It developed, however, that no agreement to insure was reached between the broker and the insurer until July 11, 1912, and that the policy, when issued, bore that date. *Held*, that the insurer was not liable for the injury which occurred on July 9, 1912, no contract of insurance being in effect on that date.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jacob Tishler v. Fidelity and Casualty Company of New York, this being case No. 3 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of Taunton, chairman, Hyman E. Slobodkin of Malden, and Horace G. Pender of Needham, heard the parties and their witnesses on August 20, September 5, September 11 and September 17. The employee was represented by Joseph S. Spencer, Esq., and the alleged insurer by Henry C. Sawyer, Esq. The evidence submitted was substantially as follows:—

Jacob Tishler, the employee, while working as a carpenter in the employ of Jacob Loitherstein, an independent contractor, on July 9, 1912, in the erection of a building in Lynn, received a personal injury arising out of and in the course of his said employment.

His employer, Loitherstein, testified that on July 3, 1912, he requested Samuel Cubelewich, an insurance broker of Boston, to obtain for him a policy of insurance under the provisions of the Workmen's Compensation Act; and that thereupon, in his presence and hearing, Cubelewich called by telephone the office of the agents of the insurance company above named, and applied for such insurance; and that after such telephone conversation the said Cubelewich stated to him that the company would insure him, and that until the policy was issued the company had agreed to keep him covered and protected by insurance, in accordance with the provisions of said act; that the employee, Tishler, was injured on July 9, 1912, and that up to and including that date no notice was given by him, Loitherstein, to his employees, by personal service or otherwise, that he had provided for insurance under the act.

Cubelewich, the insurance broker, testified that he had talked in the course of said telephone conversation with John S. Royal, a clerk or agent in the employ of Gilmour & Coolidge, general agents, and that said Royal had agreed, in behalf of the said insurance company, that a policy would be issued to Loitherstein as requested, and that in the mean time Loitherstein would be kept covered by the insurance; that on the same date, July 3, he, Cubelewich, had sent a statement on a memorandum slip of the insurance application to the agents of the company, and that on Sept. 8, 1912, he had written a letter to said agents reminding them of the application and the agreement for the insurance, and requesting that the policy be issued accordingly.

Mr. John S. Royal, a clerk in the employ of said general agents, testified that on July 3 Cubelewich had talked with him by telephone, and asked for information concerning insurance rates, and as to the commissions allowed to brokers for placing such insurance with the company, but that no request for insurance of Loitherstein was made during the telephone conversation; nor was an agreement or statement then made by him that a policy would be issued or that Loitherstein would be kept covered by the company with insurance; nor was any memorandum of such an insurance application received from Cubelewich by said agents on July 3 or dated on such date; nor had any letters been received by the agents from Cubelewich; nor could such a letter be found in their letter files after careful search; but that on July 11, 1912, he, the said Royal, received a memorandum of such an insurance application from said Cubelewich, dated July 8, and that an insurance policy or binder was issued, in accordance therewith, to Loitherstein on July 11, 1912, and bearing said date, which insured said Loitherstein on and after said July 11.

The committee finds on the weight of the evidence submitted that no oral agreement was made by said company or its manager or agents with Cubelewich on July 3 to issue insurance to Loitherstein, or to keep him covered from that date, and that the minds of the parties did not meet on such an understanding; and that any talk that occurred on July 3 was only preliminary to the insurance policy or agreement which was issued

on July 11; and that until July 11 no agreement for insurance, either oral or written, was made by the company; and that the company, therefore, is not liable for compensation by reason of the injury received on July 9, 1912.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.  
HYMAN E. SLOBODKIN.

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CASE No. 4.

MERLE D. BRITTEN, *Employee*, BY FLORA P. H. BRITTEN,  
*Claimant*.

BOSTON ELEVATED RAILWAY COMPANY, *Employer*.

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

AN INDEFINITE PROMISE TO HELP DOES NOT CONSTITUTE  
DEPENDENCY.

An employee received an injury which resulted fatally while in the employ of the Boston Elevated. It developed that he had been a student at Harvard University, and was indebted at the time of his death to the extent of \$400. His mother claimed compensation as a dependent, basing her claim upon his promise: "If there was anything he could do to help me he would."

*Held*, that she was not a dependent under the statute.

Review before the Industrial Accident Board.

*Decision*: The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Flora P. H. Britten, mother of Merle D. Britten, v. the Massachusetts Employees Insurance Association of Boston, Mass., this being case No. 4 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll of Springfield, chairman, Henry C. Shaw of Boston, and Morton C. Tuttle of Boston, heard the parties and their witnesses on Saturday, Sept. 14, 1912, at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass.

The claimant was represented by Jesse W. Morton, Esq., and the insurer by Samuel H. Pillsbury, Esq. The evidence submitted was substantially as follows:—

Merle D. Britten, while in the employ of the Boston Elevated Railway Company as a conductor, on the night of July 4, 1912, at Boston, was instantly killed by reason of a car backing down upon him. The claimant is Flora P. H. Britten, mother of the deceased employee. The only question for decision in the case is this: Was the mother dependent upon the earnings of Merle D. Britten for support at the time of his death? Mrs. Britten and her husband lived together as husband and wife, but the husband had been unsuccessful in business and for some time had been working in Michigan, the mother living in Boston, and the husband from time to time, according to his ability, contributing to her support. Merle D. Britten was unmarried. He had been attending college, and about two weeks before his death secured employment on the Boston Elevated Railway Company. During this time he lived apart from his mother and had paid her nothing. For a year previous to his death he had been attending Harvard College, where he became indebted to the extent of about \$400 for board, books and other requirements. There was evidence that he hoped to return to college, but his indebtedness was a deterring factor. Mrs. Britten had two other older sons. Mrs. Britten's claim for compensation was based on several conversations held by her with her son during the time of his employment by the defendant company, in which he said, "If there was anything he could do to help me he would."

We find there was no evidence to sustain the claim of Mrs. Britten, and that she was not dependent upon the earnings of the deceased at the time of his injury and death.

JAMES B. CARROLL.

M. C. TUTTLE.

A claim for a review, under sections 7 and 10, Part III., of the Workmen's Compensation Act, having been filed by Jesse W. Morton, Esq., attorney for the claimant, the Massachusetts Employees Insurance Association being represented by Samuel

H. Pillsbury, Esq., the Industrial Accident Board heard the parties on Thursday, Dec. 26, 1912, at 12 o'clock noon, and affirmed the findings and decision of the committee of arbitration.

INDUSTRIAL ACCIDENT BOARD,  
ROBERT E. GRANDFIELD, *Secretary*.

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CASE No. 13.

CARLO PAPPA, *Employee*.

FRED T. LEY & Co., *Employer*.

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

EMPLOYEE SUFFERING FROM HERNIA ENTITLED TO COMPENSATION.

An employee strained himself while lifting and carrying cement bags, the insurer declining to pay compensation on the ground that the injury did not arise out of and in the course of his employment.

*Held*, that the employee was entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Carlo Pappa v. Contractors Mutual Liability Insurance Company, this being case No. 13 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, James B. Carroll of Springfield, chairman, Angus MacDonald of Boston, representing the insurer, John V. Carchia of Boston, representing the employee, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Malden, Tuesday, Oct. 29, 1912, at 2 P.M.

The committee find that Carlo Pappa was injured while in the employ of Fred T. Ley & Co., on Aug. 8, 1912, suffering hernia as a result of lifting and carrying cement bags. The injured employee remained at work until about the middle of September, according to the testimony, at which time he became totally incapacitated for a period of three days, afterwards returning to work. It was also in evidence that the

injured employee was attended by Augustin Costa, M.D., making five office calls at \$1 each, and purchased a truss for which he paid \$4, during the first two weeks, making \$9 in all.

The decision of the committee is that the said Carlo Pappa is entitled to a total payment of \$9 for medical services under the act, no compensation being due on account of incapacity.

JAMES B. CARROLL, *Chairman.*

ANGUS MACDONALD.

JOHN V. CARCHIA.

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CASE No. 14.

WILLIAM SCALZE, *Employee.*

THE NATIONAL MANUFACTURING COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY.

The only question at issue in this case was the duration of the incapacity for work of the employee, as a result of the injury.

*Held*, that the employee was entitled to compensation during his incapacity for work, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, being duly sworn and having investigated the claim of William Scalze *v.* American Mutual Liability Insurance Company, this being case No. 14 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, representing the Industrial Accident Board, chairman, James F. McGovern, representing the employee, and William H. Rose, M.D., representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Worcester, Mass., on Tuesday, Jan. 14, 1913, at 9 A.M.

The evidence taken at the hearing in the city of Worcester, Mass., on Jan. 7, 1913, shows that the employee, William Scalze, received a personal injury arising out of and in the course of his employment, at the works of the National Manu-



facturing Company, and that said injury was received on Aug. 2, 1912; and "that beginning on the fifteenth day after the injury he was totally incapacitated for eight and two-sevenths weeks; that his average weekly wages were \$12.65, and that there is due to him from said insurance company as compensation the sum of \$52.45" (one-half his average weekly wages being \$6.33).

The committee finds that there is also due for reasonable medical services rendered to said employee by Dr. J. J. Brennan, of said Worcester, the sum of \$11, said services being rendered during the first two weeks after the injury.

DAVID T. DICKINSON.  
JAMES F. MCGOVERN.  
WILLIAM H. ROSE.

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CASE No. 15.

ANNIE MCNICOL, WIDOW, AND JOSEPHINE MCNICOL, MINOR  
DAUGHTER, BY ANNIE MCNICOL, NEXT FRIEND, *Dependents*.  
STUART MCNICOL, *Deceased Employee*.  
PATTERSON, WYLDE & Co., *Employers*.  
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
*Insurer*.

WIDOW OF EMPLOYEE FATALLY INJURED BY A FELLOW EMPLOYEE, KNOWN TO BE QUARRELSOME, DANGEROUS AND UNSAFE WHEN INTOXICATED, ENTITLED TO COMPENSATION. INJURY HELD TO BE A NATURAL INCIDENT OF THE EMPLOYMENT BY SUPREME JUDICIAL COURT. WIDOW ENTITLED TO ALL THE COMPENSATION.

Both employees were checkers, the fatally injured employee having the reputation of being a quiet and peaceful man of even and steady disposition, and his assailant being known to his fellow employees and the superintendent as a man who was in the habit of drinking to intoxication, and when intoxicated being quarrelsome and dangerous and unsafe to be permitted to work with his fellow employees. Not being satisfied with the way in which the employee was performing his work, the assailant began to quarrel with him, the employee only defending himself and trying to get away. As a result of the beating administered the employee died, leaving a widow and one child.

*Held*, that the injuries to the employee arose out of and in the course of his employment, and his dependents were entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration, finding, however, that the compensation due is payable solely to the widow.

Appealed to Supreme Judicial Court.

*Decision.* — The Supreme Judicial Court affirms the findings of the Industrial Accident Board.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of the dependents of Stuart McNicol *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 15 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of Cambridge, chairman, Dr. W. W. Ozon of Brookline, and Horace G. Pender of Needham, heard the parties and their witnesses on Nov. 8 and Nov. 25, 1912. The dependents were represented by Albert S. Apsey, Esq., of Boston, and the insurer by Henry C. Sawyer, Esq., of Boston. The evidence submitted was substantially as follows: —

Stuart McNicol, the employee, was working on Aug. 20, 1912, as a checker or clerk in the employ of Patterson, Wylde & Co., importers of Boston, at the Hoosac Tunnel Docks in Charlestown, Mass. Said McNicol's work consisted in checking articles of freight that were being delivered from a steamship, in order to see that they tallied with the invoice list of his employer. A fellow employee, Timothy McCarthy, was also engaged in the same work. Both McNicol and McCarthy had been hired by John W. Matthews, a foreman and superintendent of said Patterson, Wylde & Co., to do said work, and were under his supervision and direction. The evidence showed that McCarthy had been drinking, and was noticeably under the influence of liquor the whole of the time he was working during this day, and that the condition he was in must have been known by his superintendent, Matthews, who was frequently present in sight of the men as the work went on. The extent to which McCarthy was affected or intoxicated by liquor was examined into through witnesses who had observed him while at work at different times during the day. These witnesses appeared to be testifying under some restraint, and to

be withholding a full statement of their knowledge, but their testimony showed that McCarthy was plainly not in his normal condition, and at times staggered from the effects of the liquor. The testimony showed that McNicol was in no way under the influence of liquor, that he had been attending peaceably to his duties during the day, that he was a quiet and peaceable man and of even and steady disposition. Between 2 and 3 o'clock in the afternoon, McCarthy was heard to be suddenly quarreling with McNicol, and to make some angry remarks to him, but McNicol was not heard to say anything in reply. This was immediately and almost instantly followed by both men sparring or striking at each other with their hands, with McNicol retreating. As one witness put it, "McNicol tried to get away but McCarthy followed him up." McNicol was seen to retreat, with McCarthy following him, for a distance of about 50 feet, when both were seen to clinch and fall to the floor of the dock, disappearing in their fall behind a pile of freight. After some time McCarthy was seen to rise by one witness, but not McNicol, and this witness did not see McNicol again during the day. McNicol did no work after this, but Matthews, the superintendent, testified that McCarthy did some work.

It appeared that McNicol was seen later by Matthews, about 4 o'clock, lying disabled on a box about a foot above the floor, but nothing was then done by Matthews towards his relief. About 6 o'clock it appeared he was still lying in practically the same position. An ambulance was then called by Matthews, and McNicol was taken to a hospital, but died before reaching the hospital.

McCarthy at this time was a man of thirty-six years of age, weighing about 180 pounds, and of powerful strength; McNicol was fifty-two years of age, slender in build, and not physically strong. Matthews testified that he had known McCarthy for years; that he was a man who drank a good deal; that he was a good clerk when sober; that the minute he saw anything on him he let him go; that he did not hire men who drank; and that he had been hiring McNicol for five or six years. Other superintendents, whose duties required them to hire and direct men in the same kind of work, testified that they would lay

off men from work as soon as they noticed they were intoxicated. Men who had known McCarthy for years in Charlestown, where he lived, and some who had worked with him at other places, testified that they had never seen him intoxicated, and that he had worked recently more as a longshoreman than as a checker.

Patrick J. O'Neil, sergeant at police headquarters, Boston, testified that he had investigated this case and found that McCarthy was a man who was addicted to intoxication, and was very quarrelsome when under the influence of liquor, and that on the day of the assault on McNicol he was under the influence of liquor all that day.

McCarthy himself testified that he had been drinking on that day, but was not affected by it, and that he had been arrested before this for drunkenness, had been fined, and at another time placed on probation; and once had been discharged on taking the pledge, which was some time before Aug. 20, 1912; that he had hit McNicol only a few easy blows, because when he, McCarthy, had told McNicol that he had lied in regard to an entry that he, McNicol, had made on his list, McNicol had called him a "G—— D—— liar" and struck him, McCarthy, with his tally-sheet cover; that he had worked with McNicol often before, and that McNicol was a very quiet and peaceable man, and that he had never heard him make a profane remark before; that he, McCarthy, had no ill will or grudge against McNicol for any reason; that he could not say how many times he struck McNicol, but would say he struck him two or three times, but did not kick him; that he knew of no other way that McNicol could have been injured that day except through the blows he had struck him. No other witnesses testified that they heard McNicol call McCarthy a liar or swear at him, or saw him strike him with the tally-sheet cover.

Eugene McCarthy, brother of Timothy, testified that he had talked a great deal to Timothy about his using liquor, and had talked so much to him about it that Timothy was afraid to speak to him.

Dr. George Burgess McGrath, medical examiner for Suffolk County, testified that he had examined the body of Stuart McNicol on the evening of his death, and made an autopsy or

post-mortem inquiry on the following day. There was a bruised cut over the left eye, about one inch or one and a half inches long, also several small bruises. On the left side of the body was a large discolored patch about covered by the hand. The skin and tissues under it were bruised and filled with blood. Inside, the body showed that the deceased had bled internally about four pints of blood. This blood came from two injuries to the spleen, which is on the left-hand side of the body close under the ribs, and the injuries to the spleen were such as to show that bleeding had gone on for some time before the man died; also that one rib was broken on the left side. He died as a result of bleeding into the cavity from injuries to the spleen resulting from blows, force or violence in some way.

Mrs. Annie McNicol testified that she was the widow of the deceased, and that she was living with her husband at the time of his death; that they had one child, a daughter, aged nine, for whom she appeared as next friend; that the deceased had worked as a checker or clerk in this grade of employment on these docks and in the vicinity during the preceding seven years or more; and that his average weekly wages, including his overtime earnings, during the year preceding his death, after deducting lost time during a strike, and during the six years preceding, were \$15; and that she knew this because the deceased had always paid his wages over to her; that both she and her daughter were dependent on his earnings for their support up to and at the time of his injuries and death.

The committee finds that the preponderance of the evidence shows that Timothy McCarthy had been drinking and was intoxicated during the whole of this day, and that on account of his condition he was in an unsafe and dangerous condition to be permitted to work with his fellow employees, and that the superintendent, Matthews, in charge of the work, was negligent in permitting him to continue at work while in this condition; and that by reason of his intoxicated condition, McCarthy started to quarrel with and assault McNicol while he was engaged at his work, McCarthy being dissatisfied with the way McNicol was checking; and that McNicol only tried to defend himself and to get away; and that the injuries to McNicol, which caused his death, resulted from blows or kicks ad-

ministered to him by said McCarthy, and were due to an intoxicated frenzy and passion; and that on account of said facts and the negligence of Matthews in permitting him to work with McNicol while in such unsafe and dangerous condition, the aforesaid injuries to McNicol arose out of and in the course of his employment. The notice and claim of injury were duly filed.

The committee finds that the average weekly wages of the deceased were \$15, and that a weekly compensation of \$7.50 is due from the insurer to the widow and daughter, Annie McNicol and Josephine McNicol, for the period of three hundred weeks, from Aug. 20, 1912, the date of the injuries.

DAVID T. DICKINSON.

HORACE G. PENDER.

WALLACE W. OZON, M.D.

*Findings and Decision of Industrial Accident Board on Review.*

After due hearing and argument of counsel, the Industrial Accident Board affirms and adopts the findings of the committee of arbitration, except as follows, and further expressly finds and decides:—

That the preponderance of the evidence shows that Timothy McCarthy had been drinking and was intoxicated during the whole of the day, Aug. 20, 1912, beginning his work about 8 o'clock in the morning, on which day he caused the injuries to Stuart McNicol; that said McCarthy was in the habit of drinking to intoxication, and when intoxicated was quarrelsome and dangerous, and unsafe to be permitted to work with his fellow employees, all of which was known to the superintendent, Matthews; and that said Matthews being in charge of the work knowingly permitted him to continue at work during said day while in such condition; that by reason of his intoxicated state McCarthy started to quarrel with and assault McNicol about 2 o'clock in the afternoon of the same day, while the latter was engaged at his work, McCarthy being dissatisfied with the way McNicol was checking; and that McNicol only tried to defend himself and to get away; and that the injuries to McNicol, which caused his death, resulted from blows

or kicks administered to him by said McCarthy, and were due to an intoxicated frenzy and passion. The notice and claim of injury were duly filed.

The Board finds that by reason of said facts the injuries to McNicol, which resulted in his death, arose out of and in the course of his employment, and that his widow, Annie McNicol, who at the time of the injury was living with him, is conclusively presumed to have been, and in fact was, wholly dependent upon his earnings for her support.

The Board finds that the average weekly wages of the deceased were \$15, and that a weekly compensation of \$7.50 is due from the insurer to the widow, Annie McNicol, for the period of three hundred weeks from Aug. 20, 1912, the date of the injuries.

The dependent requests the Board to find that the permitting of McCarthy to work with McNicol while in said intoxicated condition was a breach of the duty imposed by law upon the employer and arising out of the contract of employment to furnish competent, safe and suitable co-employees for the doing of the work in which the employee was engaged, which at common law would have been a negligent disregard of McNicol's safety from such assault, and that said assault resulted as a natural consequence thereof.

The Board, however, rules that such finding is not material to the questions herein involved.

JAMES B. CARROLL, *Chairman.*

DUDLEY M. HOLMAN.

EDW. F. MCSWEENEY.

I concur with the above, except that I find that the permitting of McCarthy to continue at work on the day when he was intoxicated and inflicted the injuries which caused the death of the deceased, was a breach of the duty established by law upon the employer to furnish competent, safe and suitable co-employees in the performance of its work, which at common law would have been a negligent disregard of McNicol's safety from such assault, — and that this is material to the issue of whether said injuries arose out of and in the course of McNicol's

employment. I am of the opinion that this failure of the employer to furnish a competent, safe and suitable fellow servant to McNicol was an essential breach of the contract of employment between them, and that the injuries which resulted to McNicol therefrom therefore arose out of and in the course of his employment. It further tends to show the full extent of the employer's knowledge that the assault was likely to occur from placing McCarthy at work with others while in his intoxicated condition.

This act also provides, Part III., section 3, that its procedure shall be as summary as reasonably may be, and its whole purport shows that the avoidance of needless delay is one of its important objects. I think that the practice of this Board should therefore be liberal in making such findings as will present to the court all the questions raised before the Board, so that the decision of the court may be final, without the need of remanding the case to the Board for further hearing.

I am also of the opinion that inasmuch as the widow, Annie McNicol, and her minor daughter, Josephine, were both wholly dependent upon the earnings of the deceased at the time his injuries were received, the compensation should be awarded to them equally. If the compensation vests solely in the widow, it will become, according to the English decisions, her absolute property, passing to her legal representatives, whoever they may be at her death, and subject to her power of testamentary disposition to the exclusion of her daughter. Such a lack of protection to the dependent child seems an unnecessary construction of the statute and contrary to its intent.

DAVID T. DICKINSON.

*Decree of Supreme Judicial Court on Appeal.*

RUGG, C.J. This is a proceeding under St. 1911, c. 751, as amended by St. 1912, c. 571, known as the Workmen's Compensation Act, by dependent relatives for compensation for the death of Stuart McNicol.

1. The first question is whether the deceased received an "injury arising out of and in the course of his employment," within the meaning of those words in Part II., section 1 of the



act. In order that there may be recovery the injury must both arise out of and also be received in the course of the employment. Neither alone is enough.

It is not easy nor necessary to the determination of the case at bar to give a comprehensive definition of these words, which shall accurately include all cases embraced within the act, and with precision exclude those outside its terms. It is sufficient to say that an injury is received "in the course of" the employment when it comes while the workman is doing the duty which he is employed to perform. It arises "out of" the employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work, and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises "out of" the employment. But it excludes an injury which cannot fairly be traced to the employment as a contributing proximate cause, and which comes from a hazard to which the workmen would have been equally exposed apart from the employment. The causative danger must be peculiar to the work, and not common to the neighborhood. It must be incidental to the character of the business, and not independent of the relation of master and servant. It need not to have been foreseen or expected, but after the event it must appear to have had its origin in the risk connected with the employment, and to have flowed from that source as a rational consequence.

The exact words to be interpreted are found in the English Workmen's Compensation Act, and doubtless came thence into our act. Therefore, decisions of English courts before the adoption of our act are entitled to weight. (*Ryalls v. Mechanics' Mills*, 150 Mass. 190.) It there had been held that injuries received from lightning on a high and unusually exposed scaffold (*Andrew v. Failsworth Industrial Society* (1904), 2 K. B. 32); from the bite of a cat habitually kept in the place of employment (*Rowland v. Wright* (1908), 1 K. B. 963); from a stone thrown by a boy from the top of a bridge at a

locomotive passing underneath (*Challis v. London & South-western Railway* (1905), 2 K. B. 154); and from an attack upon a cashier traveling with a large sum of money (*Nisbet v. Rayne & Burn* (1910), 2 K. B. 689), — all arose in the course and out of the employment; while the contrary had been held as to injuries resulting from a piece of iron thrown in anger by a boy in the same service (*Armitage v. Lancashire & Yorkshire Railway* (1902), 2 K. B. 178); from fright at the incursion of an insect into the room (*Craske v. Wigan* (1909), 2 K. B. 635); and from a felonious assault of the employer (*Blake v. Head*, 106 L. T. Rep. 822).

The definition formulated above, when referred to the facts of these cases, reaches results in accord with their conclusions. Applying it to the facts of the present case, it seems plain that the injury of the deceased arose "out of and in the course of his employment." The findings of the Industrial Accident Board in substance are that Stuart McNicol, while in the performance of his duty at the Hoosac Tunnel Docks as a checker in the employ of a firm of importers, was injured and died as a result of "blows or kicks administered to him by . . . (Timothy) McCarthy," who was in "an intoxicated frenzy of passion." McCarthy was a fellow workman who "was in the habit of drinking to intoxication, and when intoxicated was quarrelsome and dangerous, and unsafe to be permitted to work with his fellow employees, all of which was known to the superintendent Matthews," who knowingly permitted him, in such condition, to continue at work during the day of the fatality, — which occurred in the afternoon. The injury came while the deceased was doing the work for which he was hired. It was due to the act of an obviously intoxicated fellow workman, whose quarrelsome disposition and inebriate condition were well known to the foreman of the employer. A natural result of the employment of a peaceable workman in company with a choleric drunkard might have been found to be an attack by the latter upon his companion. The case at bar is quite distinguishable from a stabbing by a drunken stranger, a felonious attack by a sober fellow workman, or even rough sport or horse-play by companions who might have been expected to be at work. Although it may be that upon the facts

here disclosed a liability on the part of the defendant for negligence at common law or under the employers' liability act might have arisen, this decision does not rest upon that ground, but upon the causal connection between the injury of the deceased and the conditions under which the defendant required him to work. A fall from a quay by a sailor while returning from shore leave (*Kitchenham v. Owners of S. S. Johannesburg* (1911), 1 K. B. 523, Sec. 6 (1911) A. C. 417); a sting from a wasp (*Amys v. Barton* (1912), 1 K. B. 40); and a frost bite (*Warner v. Couchman* (1912), A. C. 35), — all have been held to be injuries not "arising out of" the employment. But we find nothing in any of them in conflict with our present conclusion. Nor is there anything at variance with it in *Mitchinson v. Day Bros.* (1913), 1 K. B. 603, where it was held that injuries resulting from an assault by a drunken stranger upon an employee engaged at his work on the highway did not arise out of the employment. That was a quite different situation from the one now before us.

2. The next point to be decided is the persons to whom the payments provided for in the act shall be made. It may be assumed from this record that no personal representative of the deceased has been appointed. He left a widow and a minor daughter, presumably under the age of eighteen years. Part II., section 7, provides that a wife conclusively shall be presumed to be wholly dependent upon a deceased husband, while a like presumption exists in favor of "a child or children under the age of eighteen years . . . upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent." The natural meaning of this sentence is that the conclusive presumption of dependency of children is conditioned upon the non-existence of a surviving dependent parent. There are no other words in this or other sections of the act which control its plain significance. The use of the plural word "dependents" in several places in sections 6, 7 and 8 in Part II. finds ample justification in the many conceivable instances where several persons may be entitled to share in the payments when there is no surviving husband or wife.

The provisions of 6 Edw. 7, c. 58, § 13, as to the dependents

entitled to payments are wholly different from those of our own act, and decisions of the English courts have no bearing on the case at bar.

3. The act does not contemplate the allowance of exceptions, and they must be dismissed. The case is properly here on appeal. (*Gould v. American Mutual Liability Ins. Co., ante.*)

4. There is error in the decree. In the decree entered in the Superior Court the ruling of the Board of Arbitration was followed, providing that the payments should be divided equally between the widow and the dependent minor daughter, rather than that of the Industrial Accident Board, that the widow alone was entitled to the payments. This was not in accordance with the act, as has been pointed out. Apparently the judge of the Superior Court exercised his own judgment as to the kind of decree which the law required upon the facts found. This is correct. Part III., section 11, of the act, as amended by St. 1912, c. 571, § 14, provides that when copies of the "decision of the board . . . and all papers in connection therewith" have been transmitted to the Superior Court, "said court shall render a decree in accordance therewith." This means such a decree as the law requires upon the facts found by the Board. It does not make the action of the Superior Court a mere perfunctory registration of approval of the "conclusions" of law reached by the Industrial Accident Board. The section in question doubtless was enacted because of the intimation in the Opinion of the Justices, 209 Mass. 607, 612, to the effect that the decisions of the Board must be enforced by appropriate proceedings in court. The obligation placed upon the Superior Court by the requirement to enter a decree in accordance with the decision is to exercise its judicial function by entering such decree as will enforce the legal rights of the parties as disclosed by the facts appearing on the record.

It follows that the decree must be reversed, and a new decree entered as required by this opinion.

*So ordered.*

CASE No. 16.

TREFFLY TESSIER, *Employee.*

WELD BOBBIN AND SPOOL COMPANY, *Employer.*

AMERICAN FIDELITY COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY.

The sole question involved in this case was the duration of incapacity for work of the employee as a result of the injury.

*Held*, that the employee was incapacitated for work at the time of the hearing.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Treffly Tessier v. American Fidelity Company, this being case No. 16 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, John G. Walsh, representing the employee, and Charles Littlefield, representing the insurer, heard the parties and their witnesses at the City Council Chamber, City Hall, Lawrence, Mass., on Friday, Nov. 8, 1912, at 10.30 A.M.

There was no dispute as to the facts of the accident, nor the amount of the average weekly earnings, \$8.

The employee was taking a bobbin off finishing machine when his hand slipped, striking the knife on same, the injury occurring on Sept. 14, 1912.

According to the sworn testimony of Dr. Black, who attended Tessier, he was not able to return to work at the time of the hearing, and would not be for a week or ten days to come.

We find that Treffly Tessier is entitled to receive compensation at the rate of \$4 per week, beginning with the fifteenth day after the injury to the present date, Nov. 8, 1912, with a probable continuance of disability not to exceed a week or ten days.

DUDLEY M. HOLMAN.

CHARLES H. LITTLEFIELD.

JOHN G. WALSH.

CASE No. 18.

ALBERT WILLIAMS, *Employee.*

AMERICAN WRITING PAPER COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF INCAPACITY FOR WORK.

The hearing in this case was requested in order to determine the question of the incapacity for work of the employee, the evidence indicating that he was totally incapacitated for a certain period and then partially incapacitated for another definite period.

*Held*, that the employee was entitled to compensation in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Albert Williams v. American Writing Paper Company, this being case No. 18 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Charles T. MacDermott, representing the employee, and Edward C. Edwards, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Holyoke, on Wednesday, Nov. 13, 1912, at 10 A.M.

The plaintiff was represented by P. H. Sheehan, Esq., and the defendant by G. E. D. W. Clark, Esq., and after hearing the parties the committee of arbitration finds that the plaintiff was totally incapacitated from July 15, 1912, to Sept. 9, 1912, and partially incapacitated from Sept. 9 to Nov. 1, 1912, a period of seven and one-half weeks for partial and five and five-sixth weeks for total incapacity. During period of partial incapacity he earned \$4 per week, and is entitled to compensation in the amount of \$51, to be paid herewith, this being agreed to by the parties.

JAMES B. CARROLL.

EDWARD C. EDWARDS.

CHAS. T. MACDERMOTT.

CASE No. 21.

TONY STAWNIEZ OR STARVINCY, *Employee*.  
 AMERICAN PRINTING COMPANY, *Employer*.  
 EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
*Insurer*.

AN EMPLOYEE WHO CLAIMS HIS COMMON-LAW RIGHTS MAY NOT, AFTER THE INJURY, ABANDON HIS COMMON-LAW CLAIM AND CLAIM UNDER THE ACT.

The employee received an injury arising out of and in the course of his employment on July 6, 1912, his employer having become a subscriber to the Workmen's Compensation Act on July 1, 1912. Having thirty days in which to elect to claim his right of action at common law, upon advice of counsel he claimed this right in writing on July 13, 1912. Afterwards, finding that he had no case under the common law, upon advice of counsel he waived this claim and claimed compensation under the statute.

*Held*, that he was not entitled to compensation, his waiver of his common-law rights being effective, only for future injuries, five days after it is delivered to his employer or his agent.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Starvincy v. Employers' Liability Assurance Corporation, Ltd., this being case No. 21 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Jacob Maker, representing the employee, and Cornelius W. Donovan, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Fall River, Mass., on Monday, Nov. 4, 1912, at 10 A.M.

The Employers' Liability Assurance Corporation, Ltd., was represented by Foster Regnier Greene, Esq., 57 North Main Street, Fall River. The injured employee was represented by Louis Shabshelowitz, Esq., 10 South Main Street, Fall River.

It was agreed by both parties that the injured employee was employed by the American Printing Company as a back-tender in No. 2 Print Works, being a time worker, earning an average

weekly wage of \$8 a week; that on July 6, 1912, at 6.40 A.M., he was injured while cleaning rollers, cutting the finger of right hand, causing an injury which disabled him for several weeks; that on July 13, 1912, Attorney Shabshelowitz, for the injured employee, notified in writing the American Printing Company of the injury to employee; and on the same date he notified the American Printing Company in writing that the employee claimed his right of action at common law to recover damages for personal injury. Subsequently, a claim was made upon the Employers' Liability Assurance Corporation, Ltd., for damage for compensation under the Workmen's Compensation Act, which the company refused to pay on the ground that the injured employee had made his election and had to proceed under the common law.

Application for arbitration was thereupon made, and the above arbitrators met at the time stated.

There was no dispute as to the facts. The representative of the insurance company claimed that the injured employee had forfeited his right to compensation under the act by his election, on July 13, of his common-law remedies. If the injured employee is entitled to payments under the act, his compensation under the act will be paid without dispute.

Attorney Shabshelowitz, for the injured employee, contended that his application for common-law rights was invalid, on the ground that the failure of the injured employee to make this common-law election prior to his injury deprived him of his common-law rights, and compelled him to accept the remedies provided in the Workmen's Compensation Act. Attorney Greene, for the insurance company, argued against this claim.

Attorney Shabshelowitz made the additional claim that, assuming that the law permitted Starvincy to come under the common law, after this injury, and within the thirty days after the first of July, when the law went into effect, under section 5 of Part I. he could still waive his claim and return to the protection of the compensation law, by "notice in writing which shall be effective five days after it is delivered to his employer or his agent."

Arguments having been made in support of their claims by



both attorneys, the hearing was declared closed, and after deliberation the arbitrators came to the following unanimous decision as to the claims made by the attorney for the injured employee: —

Nov. 4, 1912.

1. That election (meaning the injured employee's letter of July 13, 1912, claiming common-law rights) after injury was invalid?

2. Assuming that this election (of common-law rights after injury) was valid, that under section 5 of Part I. he could still waive his claim "by a notice in writing which shall take effect five days after it is delivered to the employer or his agent?"

In both cases the board of arbitration voted "No" (unanimously).

EDW. F. MCSWEENEY.

C. W. DONOVAN.

JACOB MAKER.

CASE No. 22.

VANKIOS SCOUMAKIS, *Employee.*

RICE-VALENTINE COMPANY, *Employer.*

ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

#### EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY FOR WORK.

The sole question at issue in this case was the extent of the incapacity for work as a result of the injury.

*Held*, that the employee was entitled to compensation during his incapacity for work.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Vankios Scoumakis v. Ætna Life Insurance Company, this being case No. 22 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Charles T. Melvin, representing the employee, and Harry A. Buzzell, representing the insurer, heard the parties and their witnesses at the Auditor's Room, Court House, Springfield, Mass., on Monday, Nov. 25, 1912, and on Friday, Nov. 29, 1912.

The plaintiff was represented by George D. Cummings, Esq., and the respondent by T. S. Glenn.

We find that the plaintiff was injured on July 25, A.D. 1912, while in the employ of the respondent, Rice-Valentine Company, and that he was incapacitated from performing his work for a period of five weeks and three days; that his average weekly earnings were \$10.50 per week; and that he is entitled to compensation amounting to \$18.38.

It also appeared in evidence that Dr. J. C. Anthony attended the plaintiff and is entitled to the sum of \$2 for medical attention.

JAMES B. CARROLL.  
CHARLES T. MELVIN.

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CASE No. 23.

MARTIN GIOVANNELLA, *Employee.*

IRVING & CASSON, *Employer.*

THE FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK.

The sole question in dispute in this case was the date upon which all incapacity for work as a result of the injury ended.

*Held*, that the employee was entitled to compensation during incapacity, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Martin Giovannella v. The Frankfort General Insurance Company, this being case No. 23 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, Joseph Lundy, representing the employee, and Horace G. Pender, representing the insurer, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Tuesday, Nov. 19, 1912, at 10 A.M.

There was no dispute as to amount of average weekly wage, \$8, nor as to facts of the accident itself.

On the evidence as to the date on which the injured party was able to go to work, the arbitration committee found that he was entitled to a week and a half compensation at the minimum figure, making \$6 due him.

The physician's bill was ordered paid in the amount of \$14.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.  
JOSEPH LUNDY.

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CASE No. 25.

JOHN PAOLO, *Employee*.

WILEY & FOSS, *Employer*.

THE FRANKFORT GENERAL INSURANCE COMPANY, *Respondent Insurer*.

EMPLOYEE ENTITLED TO COMPENSATION ALTHOUGH THERE  
MAY BE NO PHYSICAL MARKS OF INJURY.

An employee, while working in a trench 10 to 12 feet deep, was buried and covered by gravel for about ten minutes. After being dug out, he was unconscious for some time. Subsequent examination disclosed no broken bones or other objective symptoms. He was removed to his home and remained in bed twenty-four days.

*Held*, that he was entitled to compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Paolo v. The Frankfort General Insurance Company, this being case No. 25 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Zachary A. Mollica, M.D., representing the employee, and Ralph W. Robbins, representing the insurer, heard the parties

and their witnesses at the Council Chamber, City Hall, Fitchburg, on Wednesday, Nov. 20, 1912, at 10 A.M., and on Saturday, Jan. 4, 1913, at 9.30 A.M.

John Paolo, the injured employee, was on Sept. 12, 1912, in the employ of Wiley & Foss, contractors. While working in a trench 10 to 12 feet deep the trench caved in, and employee was covered with earth to the extent of 2 feet over his head. He was taken from the trench in a semi-conscious condition, and removed to his home, where he remained for twenty-four days in bed. As a result of this injury, which arose out of and in the course of his employment, the injured employee was incapacitated for a period of twelve weeks, and beginning from the fifteenth day after the injury is entitled to one-half his average weekly wages of \$12 a week, or \$6 per week for ten weeks, making a total of \$60.

EDW. F. MCSWEENEY.

DR. ZACHARY A. MOLLIKA.

RALPH W. ROBBINS.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been duly filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., Wednesday, Feb. 5, 1913, at 2 o'clock, and affirms and adopts the findings of the committee of arbitration, which were based upon the following testimony:—

The employee on Sept. 12, 1912, while in the employ of Wiley & Foss, contractors, and in the course of his employment, while working in a trench 10 to 12 feet deep, was buried and covered by gravel for about ten minutes. After being dug out he was unconscious for about ten minutes. Subsequent examinations made by physicians who came to treat him disclosed no broken bones or other objective symptoms. There was no evidence of physical marks of injury. The employee, at the hearing before the committee of arbitration, testified that he had been since the accident, but not before, and was then, suffering from pains in various parts of his body, and was unable to walk except with the aid of a cane.

Dr. C. E. Geary was appointed by the Board as an impartial physician to examine the injured employee, and he examined him and reported in writing as follows: —

I think the patient received a nervous shock from scare, or some slight injury to the central nervous system, due to the pressure of the dirt, or congestion from pressure and partial asphyxiation. Therefore, my opinion is that this patient is suffering from the effects of some nervous trouble due to his accident, and which has gradually been improving. If this is not so, the patient is a malingerer. From the history of the trouble I should say the patient should be well in a few weeks.

This report of Dr. Geary was brought to the attention of counsel for the insurer, while the matter was pending before the committee of arbitration, and upon the appeal to the Industrial Accident Board.

The injured employee was requested by the committee to submit himself for examination to the Psychopathic Hospital in Boston, which request he failed to comply with.

The Board finds, at the request of the insurer, that Dr. Francis M. McMurray of Fitchburg, called by the insurer, testified before the arbitration committee that he examined the employee on Oct. 20, 1912, and stated: "I can see no reason why he cannot work now. I can discover nothing about him that causes a limp. I believe he is exaggerating his trouble." This was the only medical testimony in evidence before the arbitration committee as to the employee's ability to work.

The Board further finds that the employee was totally incapacitated as the result of said injury arising out of and in the course of his employment from Sept. 12, 1912, to Dec. 4, 1912, inclusive; that he is entitled to the payment of a reasonable sum for hospital and medical attention, and medicines for the first two weeks after the injury, and beginning on September 26 to compensation based upon half his average weekly wages of \$12 per week, to wit, a payment of \$6 per week for ten weeks, a total of \$60.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 26.

ALEXANDER HORNE, *Employee*.  
R. H. WHITE COMPANY, *Employer*.  
MARYLAND CASUALTY COMPANY, *Insurer*.

EMPLOYEE HAVING PARALYSIS AGITANS PRIOR TO INJURY  
ENTITLED TO COMPENSATION BECAUSE PREVIOUS PARALY-  
SIS WAS INCREASED TO SUCH AN EXTENT THAT HE BE-  
CAME INCAPACITATED FOR WORK.

The employee was injured by a piece of lumber falling upon him, striking him on the head and cheek. The insurer denied compensation, claiming that he was suffering from multiple sclerosis. An impartial examination developed the fact that the employee did not have multiple sclerosis, but did have paralysis agitans, which was made more progressive on account of the injury, and that he suffered from concussion and contusion caused by the injury, being incapacitated for work.

*Held*, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration, limiting the payment of compensation on account of the injury, in accordance with the findings of the impartial specialists of the Massachusetts General Hospital, to three years from Jan. 28, 1913.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Alexander Horne v. Maryland Casualty Company, this being case No. 26 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll of Springfield, Walter Haliburton and Michael C. O'Neil of Boston, heard the parties Wednesday, Nov. 27, 1912, and Friday, Dec. 6, 1912, at the hearing room of the Industrial Accident Board.

The claimant was injured Sept. 12, 1912, by a piece of lumber falling upon him and striking him on the head and cheek. Horne was at that time employed in the carpenter shop of the R. H. White Company in its department store at 518 Washington Street, Boston, Mass.

The only question in dispute in this case was as to whether his present condition was caused by the personal injury in-

flicted upon him or the disease known as multiple sclerosis. The committee of arbitration selected Dr. Thomas F. Leen to make an examination, and he reported as follows:—

I feel that the present tremor of his head and arms, and his toppling gait, are due to paralysis agitans, which has been considerably quickened in its progress by the injury which he received, and will probably progress more rapidly on that account.

Multiple sclerosis may be ruled out by the absence of its classical symptoms, as intentional tremor, scanning speech, nystagmus and increased reflexes to spasticity, which the patient has not; also, the presence of the abdominal reflex is very important, as in multiple sclerosis it is the first to disappear.

Therefore, I would say that he had no multiple sclerosis, but did have paralysis agitans, which has been much more progressive on account of the injury, and that the patient had suffered from concussion and also the contusions cited before. I believe that the injury has had such an effect that he will steadily grow much worse, and that he will not live more than a few years, and it may be less.

We find upon the evidence submitted, and the report of Dr. Leen, that Horne did not have multiple sclerosis but did have paralysis agitans, which was made much more progressive on account of the injury, and that he suffered from concussion and contusion caused by the accident. The injury had such an effect on him that the previous paralysis was increased to such an extent that he is now incapacitated for work.

We also find that prior to the date of his injury he suffered from paralysis, but that the disease at the time of the injury was not sufficiently developed to incapacitate him from working; and we further find that the injury so accelerated his previous condition that he is now helpless and wholly incapacitated for work.

The decision of the committee is that the employee is entitled to hospital and medical services during the first two weeks after the injury, and to compensation based upon half his average weekly wages, or to payments of \$5 per week, during his total incapacity for work, beginning on the fifteenth day after the injury.

JAMES B. CARROLL.

MICHAEL C. O'NEIL.

WALTER S. HALIBURTON.

*Finding and Decision of Industrial Accident Board on Review.*

A claim for review having been filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., Thursday, Jan. 16, 1913, at 2 P.M., and affirms and adopts the findings of the committee of arbitration.

Acceding to the request of Philip S. Ball, Esq., attorney for the insurer, the Board sent all the papers in the case, including the testimony, copy of the record of the patient while at the Massachusetts General Hospital, two original reports on the condition of the employee signed by Thomas F. Leen, M.D., and the report of the committee of arbitration, to F. A. Washburn, M.D., of the Massachusetts General Hospital, notifying the employee to report there for examination, and requesting the hospital authorities to have him examined "to determine, if possible, when his incapacity for work would have terminated were it not for the injury sustained while in the employ of the said R. H. White Company."

As a result of the examination, the following has been entered upon the hospital record in this case: —

The trouble (paralysis agitans) which the patient had at his previous visit would incapacitate one for work in from one to three years (from the present time, Jan. 28, 1913). His present disability, however, is due to the accident, either a traumatic neurosis or brain injury. The paralysis agitans has apparently progressed very slowly.

The Board accordingly affirms and adopts the findings of the committee of arbitration "that the employee is entitled to hospital and medical services during the first two weeks after the injury, viz., Sept. 12, 1912, and to compensation based upon half his average weekly wages; that is, to payments of \$5 per week during his total incapacity for work, beginning on the fifteenth day after the injury," — excepting, however, as follows: said compensation shall not continue after three years from this date (Jan. 28, 1913), which period will end Jan. 28, 1916, as the Board finds that, at the latter date, any incapacity in the employee will not be attributable to the injury, but, on the contrary, will be due to the natural effect of his previous disease, the paralysis agitans. This award, however, is subject



to future revision by the Board if the condition of the employee warrants such action, in accordance with section 12, Part III., of the Workmen's Compensation Act.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 28.

MICHAEL COHANE, *Employee*.  
HUGH CAIRNES COMPANY, *Employer*.  
NEW ENGLAND CASUALTY COMPANY, *Insurer*.

EMPLOYEE SHOWN TO HAVE BEEN INCAPACITATED FOR WORK  
ENTITLED TO COMPENSATION.

The employee was injured by a falling plank, and claimed compensation on account of total incapacity for work, the insurer claiming that no incapacity as a result of the injury existed.

*Held*, that the employee was incapacitated and compensation was due.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael Cohane v. New England Casualty Company, this being case No. 28 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll, chairman, Henry S. Hawkes and Charles A. Quint, the latter two of Boston, heard the parties and their witnesses on Wednesday, Nov. 20, 1912, at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass. The employee was represented by Henry W. Hardy, Esq., and the insurer by Ralph H. Willard, Esq. The arbitration committee met at 11.30 A.M., and, adjourning for a recess, met again at 2.30 P.M.

Michael Cohane, the employee, while in the employment of the Hugh Cairnes Company, general contractors, of 9 Harcourt Street, Boston, and while at work for them at the Gilchrist

building, corner of Summer and Washington streets, on the morning of Friday, September 13 last, was injured by a falling plank. As a result of this injury Cohane received treatment at the City Hospital, and was also treated by Dr. Thomas E. Walsh. As a result of the injury Cohane had severe pains in the lower right side, hip and knee, and was incapacitated for the period intervening between September 13, the date of the injury, until November 16.

The committee of arbitration therefore find that the injured employee is entitled to compensation based upon his total disability from September 28 to November 16 inclusive. The sum of \$8.60 having been paid Cohane for one week's disability, 20 cents is due him for that week, and, in addition, six weeks' compensation at \$8.80 per week (half his average wage of \$17.60) is due him; or a total payment of \$53 under the claim of the employee.

JAMES B. CARROLL.

HENRY S. HAWKES.

CHARLES A. QUINT.

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CASE No. 30.

MICHAEL J. DOHERTY, *Employee.*

FORBES LITHOGRAPH COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

#### EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY.

The only question involved in this case was the period of incapacity for work of the employee as a result of the injury.

*Held*, that the employee was entitled to compensation during incapacity, in accordance with the evidence.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael J. Doherty v. Employers' Liability Assurance Corporation, Ltd., this being case No. 30 on the files of the Industrial Accident Board, report as follows:—

The committee of arbitration, consisting of Edward F. Mc-

Sweeney, representing the Industrial Accident Board, chairman, Arthur F. Moynihan, representing the employee, and W. Lloyd Allen representing the insurer, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Tuesday, Dec. 10, 1912, at 10 A.M.

The injured employee presented his own case, without any other witness. The defendants were represented by John W. Morrison of the Employers' Liability Assurance Corporation, Ltd.

After hearing the parties the committee of arbitration finds that the plaintiff was totally incapacitated from Oct. 3, 1912, to Nov. 11, 1912, because of an injury received on Oct. 3, 1912, arising out of his employment while employed by the Forbes Lithographic Company, and is entitled to disability compensation, one-half of his average weekly wage of \$11, or \$5.50 per week for three weeks and three days, or a total of \$18.85.

EDW. F. MCSWEENEY.

ARTHUR F. MOYNIHAN.

CASE No. 31.

ANNIE M. FORSELL, ADMINISTRATRIX OF THE ESTATE OF ALVIN  
R. NELSON, *Employee*.  
BAY STATE STREET RAILWAY COMPANY, *Employer*.  
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

WIDOW, NOT LIVING WITH HER HUSBAND AT THE TIME OF  
THE INJURY, ENTITLED TO COMPENSATION.

The sole question at issue in this case was whether the widow of the employee was entitled to compensation as a dependent. She and her husband had not lived together since July, 1911, the injury occurring July 1, 1912. The evidence indicated that there had been a quarrel; that she left him; that he came and asked her to return; that he had given her money when she left for Nova Scotia, telling her he would support her and the child; that he was planning to return to Nova Scotia in September, and that there had never been any talk of legal separation or divorce.

*Held*, that the widow was wholly dependent upon him and entitled to compensation. Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Annie M. Forsell, administratrix, *v.* Massachusetts Employees Insurance Association, this being case No. 31 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Charles H. Bowen, representing the insurer, and John B. Holt, Esq., representing the employee, being duly sworn, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Wednesday, Jan. 22, 1913, at 10 A.M.

It appears from the evidence that Alvin R. Nelson, age twenty-six, 58 Myrtle Street, Somerville, was employed by the Bay State Street Railway Company as a conductor of an electric car at Revere, Mass.; that on Monday, the first day of July, 1912, at 10.05 P.M., he received injuries to his head from getting off his car, going around the rear end of it, and stepping in front of a moving car on the opposite track. He was thrown to the street, picked up unconscious, and died on his way to the Frost Hospital at Chelsea, Mass. We find on the evidence submitted that his average weekly wages were \$15.75, and that his injury arose out of and in the course of his employment. The above-named Annie M. Forsell has been duly appointed administratrix of the estate of the deceased.

The question raised by the insurance company is that of dependency. Nelson was a married man, with a child about three years of age, living with her mother in Nova Scotia, and the insurance company raised the issue that the latter was not living with her husband at the time of his death nor supported by him, and that she was not entitled to be considered a dependent, as defined in clause (a) of section 7, Part II.

We find on the evidence submitted that Mrs. Alice E. Nelson was the widow of the deceased. They were married Dec. 25, 1907. She was twenty-one years of age at that time, and her husband was the same age. They lived immediately after their

marriage in Truro, N. S., for about six months, when Mr. Nelson decided to come to Boston, and she went home to East Rawdon about May 24, 1908. There was no quarrel or difficulty of any kind at that time. He gave her about \$20 before he went away.

He remained in Boston about six months, and then she came to Boston and joined him in October, 1908. He had worked at several jobs until after she came to Boston, and he did not send her any money during that time, nor did he contribute to her support in any way. They stayed there until the following May, when he insisted on going to Chicago with a friend. The wife remonstrated, but in vain, and when he went to Chicago she returned home to her parents. He joined her again at East Mountain, N. S., in September. He did not send her any money while he was away this time, but he did give her about \$25 before he went away.

In September he took a farm at Manganese Mines, about 75 miles from her home in Nova Scotia, and they lived there about two years. It was a small farm with the usual stock. The little girl was born Aug. 3, 1910, while they were living at the farm. Her health was somewhat poor after the child was born. She had been accustomed to help her husband with the farm work. He had not previously been familiar with farm work, and did not like it very well. They had discussions from time to time about the work and they did not agree about the treatment of the stock. She thought he was "too rough" about the stock, and he got dissatisfied, thinking she might do more work than she did in the matter of farm chores. This was after the child was born, and she did not feel able to do such work.

On July 4, 1911, he ordered her to feed the calves and she refused to do so. He said that if she would not do it he would get somebody else to do it, and she said that he could; and then he told her that she could take her clothes and go if she would not do so. There was no further talk. About an hour or so afterwards she took her baby and her clothes and went to her sister's at East Mountain. A few days after that he came to her and wanted her to come back to him, but said that he was not going to stay there; that he was coming to Boston,

because he wished to get out of the scandal and talk in that vicinity growing out of his treatment of the stock and their separation, and that he intended to come to Boston. She said in her testimony, given before the committee in Boston, "I told him I would rather not come to Boston, as I did not like living up here." He left her, and again in three or four days afterwards went to see her, and wanted to know if she were coming to Boston with him. She said she thought it would be better for the child's health for her to stay in Nova Scotia, and she urged him to stay there with her. There was no further argument and he said he agreed to her staying there, and gave her about \$35 or \$37 at that time, telling her that if she would stay with the little girl he would support them. There was no talk of separation. He said he would come back again, but did not say when. It appears from the evidence that he was planning to return to Nova Scotia some time in September, and that his wife had sent him a picture of the child in June, just before he was killed, because she heard that he wanted it.

She lived with her sister and took care of the little girl up to January, when she went to work at Stansfield's in Truro, where she boarded. She went every Saturday night and often during the week to see her baby, who was at her sister's. There was no communication between herself and husband, nor had there been much letter writing exchanged between them during the other times when they had been separated, although they had occasionally written. She earned money enough to support herself and her child. Although the sister fed and cared for the child, the mother bought its clothes and looked after it when she could possibly be where the child was.

There was no direct evidence to show that either party considered that the family relation had been broken; there had never been any talk of divorce or legal separation, nor was it apparently in the minds of either that this separation differed materially from previous separations; that he was in the habit of leaving his wife and going away from her to work, giving her small sums of money on his departure, and failing to send her any while he was away, although it was testified that on one occasion when she wrote for money she did receive it from him. They parted good friends, and he left her a larger sum the last time than he had ever given her before.

Therefore the committee finds, upon all the evidence in the case, that the injury which caused Nelson's death arose out of and in the course of his employment, and that his widow, Alice E. Nelson of Truro, in the county of Colchester, N. S., was wholly dependent upon his earnings at the time of the injury, being conclusively presumed to be so under clause (a) of section 7, Part II., chapter 751, Acts of 1911, as amended by chapters 571 and 172, Acts of 1912; and that there is due her from said insurance company the sum of \$7.88 per week as compensation for the period of three hundred weeks, commencing July 1, 1912, the date of the injury.

DUDLEY M. HOLMAN.

JOHN B. HOLT.

CHARLES H. BOWEN.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties in the hearing room, Pemberton Building, Boston, Mass., Tuesday morning, May 20, 1913, at 11 o'clock, and affirms and adopts the findings of the committee of arbitration.

The Board further finds that the employee, the said Alvin R. Nelson, and the widow, Alice E. Nelson, were married on Dec. 25, 1907, living together happily during the six months immediately following their marriage, and that on or about May 24, 1908, he left Nova Scotia for Boston to find employment. He gave his wife \$20 at the time of his departure, and during the subsequent six months did not send her any money. His wife joined him in Boston in October, 1908, and remained with him until May, 1909, when he left for Chicago on a trip with a friend, against her wish. Her husband gave her \$25 just before his departure. She returned to the home of her parents on this, as well as on the occasion of his previous absence. He returned in September, meanwhile not having sent her any money, and bought a farm at Manganese Mines, N. S., about 75 miles from the home of her parents at East Mountain, N. S. The little girl was born the following August. Husband and wife had differences of opinion occasionally concerning the

treatment of the stock on the farm and the work which each should do. There was a feeling on his part that she should do more work, and on her part that she was unable to perform the work expected on account of her condition after the birth of the child. Finally, when she declined to feed the calves, he told her she could take her clothes and go, and she left their home, taking her baby, going to the home of her sister at East Mountain. This was in July, 1911. He called upon her several times, asking her to return, saying that he intended to go to Boston to find employment, as he did not wish to remain in Nova Scotia on account of the scandal created by their personal troubles and his treatment of the stock. She did not wish to live in Boston, not having liked living there previously, and she told him that she thought it best for the child's health for her to remain in Nova Scotia, and she urged him to stay with her. He finally agreed to her remaining in Nova Scotia with the child, gave her \$35 or \$37, and told her that if she would remain with the little girl he would support them. She sent him a picture of the child the following June. He had frequently spoken of returning to Nova Scotia, and his sister, Annie M. Forsell, stated that he had expressed a definite intention of returning in September. Death by personal injury arising out of and in the course of his employment intervened, however, on July 1, 1912. There had never been any talk of legal separation or divorce; there was no evidence to show that either party considered that the family relation had been severed; nor did it appear that, in the minds of either, this separation differed from previous separations. The last parting had been friendly; the husband gave the wife a larger sum of money than upon any previous occasion; he made a definite promise of support; spoke in friendly terms of wife and child to his sister, the said Annie M. Forsell, and had made definite plans to return to them in September.

The Industrial Accident Board therefore finds, upon all the evidence, that Alvin R. Nelson, the said employee, received a personal injury resulting in death, said injury arising out of and in the course of his employment, and that the widow, the said Alice E. Nelson, was wholly dependent for support upon the said employee, within the meaning of section 7 (a), Part II., of the Workmen's Compensation Act, being conclusively pre-



sumed to be wholly dependent under said section; and that there is due her from said insurance company the sum of \$7.88 per week as compensation, for a period of three hundred weeks from the date of the injury, commencing July 1, 1912, that is, a total sum due of \$2,364.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 32.

JOSEPH SMITH, *Employee.*

FARWELL BLEACHERY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

COUNTER CLAIMS OF SERIOUS AND WILFUL MISCONDUCT ON  
THE PART OF EMPLOYEE AND EMPLOYER WITHDRAWN  
AT HEARING AND USUAL COMPENSATION ALLOWED.

The employee filed a claim for compensation, alleging serious and wilful misconduct on the part of the employer or his superintendent, and the insurer, claiming serious and wilful misconduct on the part of the employee, asked for a hearing before a committee of arbitration. It was agreed, at the hearing, to withdraw the claim of serious and wilful misconduct, the employee agreeing to accept and the insurer agreeing to pay compensation in accordance with the terms of the act.

*Held*, that the employee was entitled to compensation for personal injury arising out of and in the course of his employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Smith v. American Mutual Liability Insurance Company, this being case No. 32, on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, John P. Kane of Lawrence, representing the employee, and Putnam H. Ropes of Lawrence, representing the insurer, heard the parties and their witnesses Wednesday morning, Jan. 8, 1913, at 10.30 A.M., in the Aldermanic Chamber, City Hall, Lawrence, Mass.

The employee was injured Sept. 24, 1912, while in the employ of the Farwell Bleachery, at its place of business on South Canal Street, Lawrence, Mass., by reason of the falling of bales of finished goods which were piled in tiers, and suffered a fracture of the collar bone and an injury to his right shoulder.

This case would not have been heard at arbitration but for the fact that the employee claimed double compensation, charging serious and wilful misconduct, under section 3, Part II., of the act, on the part of his employer. The insurance company thereupon claimed serious and wilful misconduct, under section 2, Part II., of the statute, on the part of the employee.

The employee withdrew his claim of serious and wilful misconduct on the part of his employer while the hearing was in progress, and thereupon the insurance company agreed to withdraw its claim of serious and wilful misconduct on the part of the employee, and acknowledged that the injury arose out of and in the course of Smith's employment.

The committee finds that the injury incurred by Joseph Smith on Sept. 24, 1912, while in the employ of the Farwell Bleachery, arose out of and in the course of his employment, and that he is entitled to medical and hospital services and medicines during the first two weeks after the injury, and to compensation based upon half his average weekly wages, beginning on the fifteenth day after the injury.

JOSEPH A. PARKS.

JOHN P. KANE.

PUTNAM H. ROPES.

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CASE No. 37.

MAX DREYFUS, *Employee.*

FORE RIVER SHIPBUILDING COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

#### WORKMAN RECEIVING EYE INJURY ENTITLED TO ADDITIONAL COMPENSATION.

The sole question involved in this case was whether the employee's loss of vision was attributable to the injury sustained.

*Held*, that the employee was entitled to additional compensation on account of the loss of vision.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Max Dreyfus v. Massachusetts Employees Insurance Association, this being case No. 37 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, Philip Davis, representing the employee, and William J. Keville, representing the insurer, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Thursday, Jan. 23, 1913, at 10 A.M.

In the case of Max Dreyfus, employed by the Fore River Shipbuilding Company as an iron worker, who was injured on July 13, 1912, we find that he was knocking a countersink against a reamer to loosen it, and a chip flew off and went into his eye. He reported to the hospital, and was sent by them to the Massachusetts Charitable Eye and Ear Hospital for operation and treatment. We find on the weight of the evidence that the sight has been reduced to one-tenth of normal vision, or less, with glasses, as a result of the injury, which arose out of and in the course of his employment; and that Dreyfus is entitled to recover additional compensation for the loss of the eye, as provided in section 11, (b) Part II., for a period of fifty weeks. We find that his average weekly wage was \$8.14.

DUDLEY M. HOLMAN.  
WILLIAM J. KEVILLE.  
PHILIP DAVIS.

CASE No. 38.

HORACE P. LEWIS, *Employee.*  
CITY FUEL COMPANY, *Employer.*  
GLOBE INDEMNITY COMPANY, *Insurer.*

DEPENDENTS OF DRIVER OF COAL WAGON WHO FELL INERTLY  
TO GROUND FROM HIS SEAT AND DIES, NOT ENTITLED TO  
COMPENSATION.

A driver of a coal wagon was about to drive on the scales to obtain the weight of his load of coal. He fell inertly to the ground, and the medical examiner pronounces death due to natural causes.

*Held*, that this was not a personal injury under the act.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Horace P. Lewis v. Globe Indemnity Company, this being case No. 38 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Wendell P. Hudson, M.D., representing the employee, and Herbert C. Hill, representing the insurer, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Monday, Dec. 9, 1912, at 10 A.M.

We find that the deceased man, a driver of a coal wagon, was, about 7 A.M. on the morning of August 12, on the seat of his wagon, about to drive on the scales to obtain the weight of his load of coal, when he was seen to fall inertly to the ground. When the doctor who was called in arrived, Lewis was found to be dead, which death was probably instantaneous.

Testimony was offered by the doctor first called, by Medical Examiner Magrath and others that there was no skull fracture or other evidence that would indicate that death was the result of the fall, or due other than to wholly natural causes.

The arbitrators find that the death of Horace P. Lewis was

due to natural causes and was not the result of personal injury arising out of and in the course of his employment.

EDW. F. MCSWEENEY.  
WENDELL P. HUDSON, M.D.  
H. C. HILL.

CASE No. 40.

AMEDIE ARCHAMBAULT, ADMINISTRATOR OF ALBERT BLANCHETTE, *Employee*.

NEW ENGLAND BRICK COMPANY, *Employer*.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer*.

WIDOW, WHOSE HUSBAND DID NOT LIVE AT HOME, BUT WHO CONTRIBUTED TO HER SUPPORT, ENTITLED TO COMPENSATION.

The workman was employed in another city and did not live with his wife and children. He contributed to their support, however, sending money regularly to them.

Held, that the widow was entitled to compensation as being totally dependent upon the employee for support at the time of the injury.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Albert Blanchette v. London Guarantee and Accident Company, Ltd., this being case No. 40 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, chairman, Thurston L. Smith of Boston, for the insurer, and Joseph S. Lapierre of Lowell, for the employee, heard the parties and their witnesses on Thursday, Dec. 5, 1912, at 10 A.M., at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass. T. Dickson Smith, Esq., appeared for the insurance company. Employee was not represented by counsel. The evidence submitted was substantially as follows: —

That Albert Blanchette, the employee, was fatally injured Tuesday morning, July 16, 1912, while in the employ of the New England Brick Company, at the brick manufacturing plant in Medford, Mass. Blanchette has a wife and one minor child, and earned \$9 a week. He contributed to the support of the widow, and upon the evidence as submitted the committee finds that she is entitled, under section 7, Part II., to half his average weekly wages, or the sum of \$4.50 per week, for a period of three hundred weeks from the date of the injury to Albert Blanchette; said payments to be made to Amedie Archambault, the administrator of the estate of Albert Blanchette, by the London Guarantee and Accident Company, Ltd.

JAMES B. CARROLL.  
THURSTON L. SMITH.  
JOSEPH S. LAPIERRE.

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CASE No. 43.

REGINALD COOK, *Employee.*

NEAPOLITAN ICE CREAM COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

AN EMPLOYEE WHO EXERCISES HIS OPTION, AND EFFECTS A SETTLEMENT WITH THE INDEPENDENT WRONGDOER, HAS NO CLAIM UNDER THE ACT.

The employee received an injury while in the employ of the Neapolitan Ice Cream Company, an automobile colliding with the team which he was driving. He exercised his option under section 15, Part III. of the act, and effected a settlement with the insurer of the owner of the automobile. Afterwards he claimed under the statute.

*Held*, that, having exercised his option to proceed against the independent wrongdoer, he had no claim under the act.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Reginald Cook v. Employers' Liability Assurance Corporation, Ltd., this being case No. 43 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Thomas H. Mahony, representing the employee, and Owen A. Cunningham, representing the insurer, heard the parties and their witnesses at the committee room, City Hall, Cambridge, Mass., on Thursday, Jan. 2, 1913, at 10 A.M.

There were present the above-named arbitrators and Mr. Morrison, representing the Employers' Liability Assurance Corporation, Ltd., who made the following statement:—

Reginald Cook was in the employ of the Neapolitan Ice Cream Company on Oct. 20, 1912, and had been for some time prior to that date; on said Oct. 20, 1912, he was driving along State Street, Cambridge, going toward Massachusetts Avenue, and was just about to cross Windsor Street in said Cambridge when an auto owned by Hiram B. Meyers of Wellesley Hills, and driven by William B. Taintor of Lexington, collided with the team which said Cook was driving in such a manner as to make either or both Taintor or Meyers legally responsible for the damage occasioned said Cook.

No doctor's certificate has been furnished to the Employers' company, but said Cook informed our investigator, Mr. Scigliano, that he thought he would be incapacitated for three weeks. Mr. Scigliano, on Oct. 28, 1912, talked with said Cook and informed him as to his respective rights against the Neapolitan Ice Cream Company and the autoists, and that it was optional with said Cook to proceed against either the autoists or the Ice Cream company, but that he could not proceed against both. Cook then told Scigliano that he did not intend to make any claim against his employer. On Nov. 5, 1912, the said Cook settled his claim against the automobile, which was insured in the United States Casualty Company, signing a release under seal running to Hiram B. Meyers and William B. Taintor, and received in settlement the sum of \$190.

Mr. Morrison called the attention of the arbitrators to sections 14 and 15 of Part III. of the act, and contended that these arbitration proceedings have been brought without reasonable grounds, and requested that the arbitration committee shall assess the whole cost of these proceedings upon the said Cook.

Neither the injured employee, Reginald Cook, nor anybody representing him, was present. A letter was submitted, addressed to Robert E. Grandfield, secretary of the Industrial Accident Board, signed by Cook, in which he admitted that he had received \$190.

It was held that inasmuch as the injured employee has exercised his option under section 15, Part III. of the Workmen's Compensation Act, to claim liability for the injury from some person other than the subscriber, and had actually recovered damages therefor, the said Cook was not entitled, under the said section 15 of Part III., to receive damages under the Workmen's Compensation Act.

EDW. F. MCSWEENEY.  
OWEN A. CUNNINGHAM.  
THOMAS H. MAHONY.

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CASE No. 45.

JOHN W. DODGE, *Employee*.  
HAVERHILL GAS LIGHT COMPANY, *Employer*.  
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

WORKMAN PERFORMING WORK BY CONTRACT ENTITLED TO  
COMPENSATION BECAUSE EMPLOYER HAD RIGHT TO DIRECT  
HIM AS TO MANNER AND METHOD OF DOING HIS WORK.

The employee claimed compensation, and the insurer refused payment on the ground that he was not an employee, but an independent contractor. Employee contracted to care for 176 naphtha lights, receiving 3½ cents per light, and engaged other men to assist him. The employee claimed that his employer had the right to direct him as to the way, means and manner of doing his work, and the manager of the Haverhill Gas Light Company admitted that he had the right to so direct him.

*Held*, that the claimant was an employee under the act and entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John W. Dodge v. Massachusetts Employees Insurance Association, this being case No. 45 on the files of the Industrial Accident Board, reports as follows:—

The arbitration committee, consisting of James B. Carroll, chairman, of Springfield, Dr. Francis W. Anthony, for the insurer, and Arthur L. Nason, for the employee, both of Haverhill, heard the parties and their witnesses in the Aldermanic



Chamber, City Hall, at Haverhill, on Wednesday, Dec. 18, 1912, at 10.15 A.M.

The only witnesses were the claimant, John W. Dodge, and Thomas Nickerson, manager of the Haverhill Gas Light Company at the time of the injury to the claimant. It was not disputed that the claimant suffered injuries arising out of and in the course of his employment while in the employ of the Haverhill Gas Light Company. The only controversy was whether Mr. Dodge was an employee within the meaning of the Workmen's Compensation Act, or an independent contractor.

The committee of arbitration finds the facts to be as follows: —

Mr. Dodge had charge of the naphtha lights in the city of Haverhill belonging to the employer, his work consisting of caring for these lights, 176 in number, the employer supplying him with naphtha, mantles and all the materials with which the work was done, the claimant receiving  $3\frac{1}{2}$  cents per light per night for caring for the same, he supplying, at his own expense, whatever men were necessary to assist him in the work, and also supplying himself with a horse and vehicle to aid him in the work.

He had been engaged at this work for many years, starting with the Wheeler Company, a predecessor of the Haverhill Gas Light Company, about seventeen years ago, when he had in all 32 naphtha lamps to care for. The number was increased until, at the time of his injury, he had 176 lights to care for.

The claimant testified, and we find, that the Haverhill Gas Light Company had the right at any time it wished to direct him in work, to tell him what to do and how to do it. He said: "The Gas company had the right at any time it wished to exercise its authority and tell me what to do and how to do my work. Because my work was satisfactory they had no cause for complaint; they did not exercise that right, but they did have the right to direct me as to the way, means and manner of doing my work."

Mr. Nickerson testified that, as the manager of the employer, he had the right to terminate the claimant's employment at any time he wished. He said: "We had the right to

terminate Mr. Dodge's employment at any time, and to direct him as to the way, manner and method of doing business, but never saw fit to exercise it because his work was in the main satisfactory."

It was agreed between the parties, in case the committee of arbitration found for the claimant, that he would be entitled to the sum of \$97 for medical bills and compensation for incapacity dating from July 18, 1912, two weeks after the injury, until and including Oct. 10, 1912, at the rate of \$5 each week, making in all \$157.71.

The committee of arbitration finds that the claimant is entitled to the sum of \$97 for medical and hospital services, and the sum of \$60.71 for the period of twelve and one-seventh weeks' incapacity, making in all the sum of \$157.71.

JAMES B. CARROLL.

ARTHUR L. NASON.

FRANCIS W. ANTHONY.

The following notation is made at the request of Francis W. Anthony: It was shown by the testimony of Mr. Dodge and of Mr. Nickerson that the claimant Dodge had been continuously in the employment of the Haverhill Gas Light Company for a number of years, no evidence being presented to show that this period of employment was broken by any new agreement to perform specified work.

CASE No. 46.

PATRICK KEANEY, *Employee.*

DANIEL L. TAPPAN *et al.*, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

COMMITTEE OF ARBITRATION DECIDES HELPER ON A FARM  
IS ENTITLED TO COMPENSATION. FINDING REVERSED BY  
INDUSTRIAL ACCIDENT BOARD. DISSENTING OPINIONS  
FILED.

The employee was injured while building a load of hay on a farm wagon, falling from the top of the load and receiving a broken rib and other injuries. His employers insured "drivers and helpers" under a Workmen's Compensation policy, posting a notice in the washhouse and boiler room informing their employees of this insurance. The notice referred to "drivers," while the policy covered "drivers and helpers" with an estimated pay roll of \$1,650 per annum.

*Held*, that the employers were "subscribers;" that the employee was a helper at the time of the injury; that a "subscriber" must accept the act in whole and not in part; that in any event "drivers and helpers" were farm laborers; that the subscribers insured their farm laborers and became subject to the act; that the employee is entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board reversed the findings of the committee of arbitration, finding that the employee was a farm laborer, and not being insured, was not entitled to compensation.

Messrs. Holman and Dickinson filed dissenting opinions.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick Keaney v. Employers' Liability Assurance Corporation, Ltd., this being case No. 46 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, W. Lloyd Allen, Esq., representing the insurer, and Joseph L. P. St. Cœur, representing the employee, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, on Monday, Jan. 13, 1913, at 10 A.M., and finds as follows: —

We find that Patrick Keaney was an employee of Daniel L. Tappan *et al.*, and that on Sept. 24, 1912, while engaged in building a load of hay on a team, he fell from the top of the load of hay and received a broken rib and a bad shaking up. He was taken to the Massachusetts General Hospital for treatment.

We find that Daniel L. Tappan *et al.* insured his "drivers and helpers" under a compensation insurance policy; that he had drivers and helpers whose particular work was to drive the produce to market and deliver it, and to drive the manure wagons to and from the city stables; that he usually keeps his men all the year round; that when the teams would go to Boston these men would have to load and unload, and that they might or might not have to load up at the farm; that these men also worked at the farm, doing anything that would be connected with a farm of such description, greenhouse work, hotbed work or raising any kind of crops, and when not working on the teams they would do all kinds of farm labor; that Tappan *et al.* had many other horses and teams used in the usual farm work, and that the driving and helping on those teams was not the usual work of the men who drove the produce to market, nevertheless, these men might be used for that purpose when not engaged in going to market; that drivers and helpers on the teams at the farm might in some cases be used in loading and helping, and also driving the teams that go to market; that Mr. Keaney worked as a farm laborer for Mr. Tappan for about twenty-five years, and that he did the usual farm work, and would oftentimes be called upon to assist in driving or helping on a team, but never drove a team to market; that the hay was grown on leased land, but was loaded on land not owned by Tappan *et al.*; that Mr. Keaney was considered the most expert employee of Tappan *et al.* in building a load of hay; that Mr. Tappan *et al.* had posted a notice in the washhouse and boiler room, where all the men had to come, that he had insured. The notice itself read:—

#### NOTICE TO EMPLOYEES.

As required by chapter 751, Acts of 1911, Commonwealth of Massachusetts, and amendments thereto, entitled "An Act relative to payment to (here the word 'employees' was crossed out and the word 'drivers' was

substituted for it) for personal injuries received in the course of their employment, and to the prevention of such injuries."

This will give you notice that I have provided for payment to our injured employees under the above act by insuring with the Employers' Liability Assurance Corporation, Ltd., of London, 33 Broad Street, Boston.

D. L. TAPPAN,  
*Name of Employer.*

AUG. 17, 1912.

In the Policy of Insurance which D. L. Tappan *et al.* took out under the name of Daniel L. Tappan and Ethel E. Tappan, which was a regular workmen's compensation policy of Massachusetts of the Employers' Liability Assurance Corporation, Ltd., of London, Eng., under the description "kind of trade, business, profession or occupation, manual classification," drivers and helpers, with an estimated pay roll of \$1,650, were insured.

We find that section 6, Part IV. of chapter 751, Acts of 1912, provides that any employer in the Commonwealth may become a subscriber. Section 20, Part IV., provides that every subscriber shall, as soon as he secures a policy, give notice in writing or print of the fact to all persons under contract of hire with him that he has provided for payment to injured employees by the association. Section 2 of Part I. provides that the provisions of section 1 shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

We find: —

*First.* — That Daniel L. Tappan *et al.* were subscribers under the Workmen's Compensation Act (see section 6, Part IV.), and that Patrick Keaney was an employee of Tappan *et al.*, and was injured in the course of his employment.

*Second.* — That Daniel L. Tappan *et al.* by the terms of the policy insured drivers and helpers, and that, as a matter of fact, Patrick Keaney was a helper at the time of the injury.

*Third.* — In any event, we hold that a subscriber must accept the act in whole and not in part. That Daniel L. Tappan *et al.*, having voluntarily become subscribers, were obliged by section 20, Part IV., to notify all persons under contract of

hire, and therefore automatically placed themselves in the position of employers under the act.

*Fourth.* — In any event the drivers and helpers of the subscribers, as a matter of fact, were farm laborers.

*Fifth.* — That the subscribers in fact insured their farm laborers, and thereby waived the exemption and became subject to the act.

*Sixth.* — That Patrick Keaney is entitled to recover under the Workmen's Compensation Act.

DUDLEY M. HOLMAN.

JOSEPH L. P. ST. CŒUR.

*Dissenting Opinion.*

The general policy of the act is one of benefit to the farmer, and all provisions in the act should be construed in a light most favorable to the farmer. The farmer need take out no insurance and yet have all his common-law defenses open to him. He should be allowed to take insurance on his extra hazardous risks, and if he does so he should be allowed to have his common-law defenses open to him against that class of risk which he did not insure. To rule that the farmer cannot divide his pay roll or liability, and that if he insures one class of risk he is obliged to insure all his farm hands, is to repudiate the policy of the act, which is one of benefit to the farmer.

I submit, therefore, that Mr. Tappan was well within the rights under the act in splitting his pay roll or liability, and therefore Mr. Keaney cannot recover.

*Further Opinion.*

As a question of fact I find: —

(a) That it was the intention of the insurance and the insured to cover only "drivers and helpers" by the policy of insurance in this case.

(b) That "drivers and helpers" is used in a technical or peculiar sense, as applied to this farm.

(c) That "drivers and helpers," as explained by Mr. Tappan and Mr. Keaney, means a certain class of drivers and helpers

who drove the wagons loaded with produce to the market in Boston and return.

(d) That Mr. Keaney was not a driver or helper within the explanation above set forth.

Wherefore I rule he is not entitled to compensation.

W. LLOYD ALLEN.

*Report of Joseph L. P. St. Cœur, Arbitrator.*

I hold: —

*First.* — That Patrick Keaney was insured by Daniel L. Tappan *et al.* under the Workmen's Compensation Act, and is entitled to the full benefit of said act.

*Second.* — That Daniel L. Tappan *et al.*, by the terms of the policy, insured drivers and helpers, and that as a matter of fact Patrick Keaney was a helper at the time of the injury within the terms of this policy.

*Third.* — That parole evidence cannot be introduced to vary the terms of a written instrument, and the subscriber, therefore, cannot show by parole evidence or otherwise that certain class or classes of drivers and helpers were intended.

*Fourth.* — In any event Tappan *et al.*, having become subscribers under the act and required to give notice to all employees, could not insure part and not all.

*Fifth.* — In any event, drivers and helpers of the subscriber were, as a matter of fact, farmers, and therefore the subscriber in fact insured his farm laborers, and thereby waived the exemption and became subject to the act.

JOSEPH L. P. ST. CŒUR.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., Wednesday, May 21, 1913, at 3 P.M., and, revising the decision of the committee of arbitration, finds as follows: —

The employer, Daniel L. Tappan, carried on a market garden in Arlington, Mass. At the time of the injury to Patrick Keaney, the employee, Mr. Tappan had in his employ four drivers and four helpers, who were engaged in the work of driving the produce of the farm to market and delivering it in the city of Boston. All of the driving and delivering was done by these four drivers and helpers. These men were employed the year round. When they were not engaged in the work of delivering the produce of the farm, they worked upon the farm, doing all kinds of farm work. In addition to these so-called drivers and helpers, Mr. Tappan employed upon his farm certain men who were engaged exclusively in the work of farm labor, and who did nothing in the way of driving or helping on the teams engaged in delivering. Mr. Keaney, the injured man, was such a laborer; that is, he was engaged exclusively in farm labor, and had not been engaged at any time in the work of driving and helping to distribute the produce of the farm. At the time of the injury he was on the top of a load of hay, and hay was being gathered on Mr. Tappan's land for his own use and not for sale.

Mr. Tappan procured a policy of insurance in the Employers' Liability Assurance Corporation, Ltd., insuring his "drivers and helpers" on an estimated pay roll of \$1,650 a year. As a matter of fact, the pay roll of his "drivers and helpers" was more than \$1,650 a year. The policy was issued on the thirty-first day of July, 1912. Shortly before this time the employer had been informed that he would be liable in case the "drivers and helpers" were injured while engaged in the work for which they were hired.

The employer did not intend to have the Workmen's Compensation Act cover all of his farm laborers. What he desired to do was to protect himself from loss in case any of the men engaged in the work of distributing his farm produce were injured, and this was his sole purpose in procuring this policy of insurance.

If these so-called "drivers and helpers" were not farm laborers within the meaning of the act, then Tappan had the right to give them the benefit of the Workmen's Compensation Act, without thereby making himself liable under the act to all



of the employees upon his farm; that is to say, by insuring the "drivers and helpers" he did not thereby make himself liable to his employees who were strictly farm laborers within the meaning of the act, and thereby excluded. It is to be noted that farm laborers are expressly excluded from the act (see Part I., section 2). The Legislature clearly intended to leave the farmer exactly where he was before the Workmen's Compensation Act was passed. It intended to exclude his farm laborers from any rights or benefits under the act, and to exempt the farmer from all liability under the act, and so, if these "drivers and helpers" whom Tappan intended to insure were not farm laborers while engaged in the work of driving, loading and unloading the teams, he had the right to insure them without subjecting himself to any additional liability to his farm laborers. If this is not so, then it follows that an employer who is engaged in farming as a trade or business, and also in the trade or business of manufacturing cigars from the tobacco raised on his farm, cannot protect his cigar makers under the Workmen's Compensation Act without also doing the same thing for his farm laborers. He cannot, in other words, divide his insurance so as to protect himself where he is liable under the act, without also subjecting himself to liability to respond in damages to those employees of his who are not within the purpose and meaning of the act.

If it is true that the "drivers and helpers" in this case, while engaged in distributing farm products, are engaged in farm labor, there is nothing in the statute which prevents the employer from insuring a part of his farm employees without insuring all of them. While it is true that the language of the act, fairly construed, makes the employer liable for all of his employees if he becomes a subscriber by insuring any of them, so that in ordinary cases if an employer becomes a subscriber as to a part he becomes a subscriber as to all of his men, it is to be noted that this language of the act applies only to the ordinary employer, the employer who is engaged in some business other than farming or the running of a household. It is to be remembered that throughout the whole act the Legislature was dealing with the employer, desiring, by taking away the ordinary defences, to make it advantageous to insure his em-

ployees under the statute. The fair construction of the statute does not prevent the farmer from insuring a part of his employees without thereby being forced to insure all of them. The farmer is in a class by himself. He may give the benefit of the act to his employees or not, as he decides. He may think that one man upon his farm, while driving a vicious bull or operating a mowing machine or engaged in some other hazardous undertaking, is in a peculiar place of danger and should be protected, and he has the right to so protect him, and save himself from possible bankruptcy, without protecting other of his employees who are not so exposed to any special hazard. The same thing is true of a householder. He may have one or more employees about his house who are engaged in what might be called dangerous employment. He may have a chauffeur, or a gardener, or a man caring for his horses. He may think it wise to save himself and protect these employees by taking out a policy under the Workmen's Compensation Act, or by taking out, for such employee or employees, a straight accident policy. Why should he not be permitted to do this without being compelled to insure all who are engaged in domestic service in his employ? If it was the intention of the Legislature to exclude a householder and a farmer from the Workmen's Compensation Act, and yet give them the right voluntarily to take advantage of it if they wished, there is nothing in the act which compels them thereby to protect everybody in their employ. They can come in under the act or stay out, and if such employers come in, they are not obliged, by any language of the act, to protect all of their employees. They have their right of election as to whether they will insure any of their employees, and how many.

The employee asked for the following rulings: —

1. That Daniel L. Tappan *et al.* were subscribers under the Workmen's Compensation Act, and that Patrick Keaney was an employee of Tappan *et al.*, and was injured in the course of his employment.

2. That Tappan *et al.*, by the terms of the policy, insured drivers and helpers, and that as Patrick Keaney was a helper, as a matter of fact he is entitled to recover.

3. That parol evidence cannot be introduced to vary the terms of the written instrument, namely, the policy, and it

cannot be shown by parol evidence, or otherwise, that certain class or classes of drivers and helpers were intended.

4. That the drivers and helpers of the subscribers were farm laborers.

5. The subscribers, having insured the farm laborers, thereby waived the exemption and became subject to the act.

6. That Tappan *et al.*, having become subscribers under the act, could not insure part and not all of their employees.

7. That Patrick Keane is entitled to recover under the Workmen's Compensation Act.

As to the first request, the Industrial Accident Board rules that Keane was an employee of Tappan, was injured in the course of his employment, and that, while Tappan was a subscriber under the Workmen's Compensation Act, Keane was not one of the employees whom he insured.

The second request is refused.

The fourth request is refused.

The fifth request is refused.

The sixth request is refused.

The seventh request is refused.

As to the third request, no evidence was introduced before the Industrial Accident Board. Our findings are made upon the evidence introduced before the committee of arbitration, and there was no evidence violating the parol evidence rule introduced at that hearing that has influenced our decision.

We therefore find that Patrick Keane, being a farm laborer and not being insured by his employer, Daniel L. Tappan, is not entitled to compensation under the Workmen's Compensation Act.

JAMES B. CARROLL.

EDW. F. MCSWEENEY.

JOSEPH A. PARKS.

*Dissenting Opinion.*

The undersigned member of the Board is unable to agree with the conclusions arrived at by the majority of the Industrial Accident Board in the case of Patrick Keane, employee, the Employers' Liability Assurance Corporation, Ltd., insurer, and Daniel L. Tappan *et al.*, employer.

It was plainly the intention of the Legislature, in enacting the Workmen's Compensation Act, so called, chapter 751, Acts of 1911, as amended by chapters 172 and 571 of the Acts of 1912, to exempt two classes of employers from the inducement or coercive provisions of section 2 of Part I. of this act. The Workmen's Compensation Act is an elective act and not a compulsory act, but in order to compel employers of labor, other than in these two classes, namely, domestic servants and farm laborers, to insure under the act, Part I. provides that the three main defenses hitherto relied upon by employers of labor for their protection against suits to recover damages for personal injuries should be removed from employers who do not insure: first, that the employee was negligent; second, that the injury was caused by the negligence of a fellow employee; and third, that the employee had assumed the risk of the injury. These defenses are removed in the case of employers who do not come in under the act.

It was the evident intention of the Legislature not to apply these inducements or coercive provisions to employers of domestic servants and farm laborers. There is nothing in the act, however, that bars an employer of farm laborers from becoming a subscriber and coming in under the act, and thus receiving the benefits of the act; and these benefits are substantial for the employer.

The status of the employees of a farmer, as to the right to recover damages for personal injuries, is unchanged by this act, provided the employer does not insure, and the farmer is liable for damages to an indefinite amount for injuries received by a farm laborer in the course of his employment if that injury is due to the negligence of the farmer, his superintendent or agent, or to defect in the ways and machinery employed, provided there was no assumption of risk, contributory negligence or negligence of a fellow workman.

When an employer of labor insures under the act, his liability, so far as being responsible for damages for personal injuries received by employees in the course of their employment, is at an end, and is fixed by the amount of annual premium which he pays to the insurer. Hence, an employer under the act exchanges a possible indefinite amount of damages for a

certain fixed payment of money, and his liability is limited thereto. In order that farmers might take advantage of this provision, and thus limit their liability, section 6 of Part IV. gives them that opportunity. It provides that "any employer in the Commonwealth may become a subscriber."

In order, therefore, that any employer may come in under the act whose employees at least were such according to the definition of employee in Part V., it is provided in section 6 of Part IV. that any employer in the Commonwealth may become a subscriber. The definition of "subscriber" in section 2, Part V. of the Workmen's Compensation Act says, "'Subscriber' shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV., section twelve."

In this particular case the employer insured with a liability insurance company, and the provisions of section 3, Part V., are the provisions under which he takes out his policy. Section 3 of Part V., as amended by section 17, chapter 571, Acts of 1912, provides "any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II. of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation, it shall be subject to the provisions of Parts I., II., III. and V. and of section twenty-two of Part IV. of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto, and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply."

When an employer has become a subscriber under section 6, Part IV., the provisions of section 20, Part IV., provide that "every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons under contract of hire

with him that he has provided for payment to injured employees by the association." Section 21, as amended by section 16 of chapter 571, Acts of 1912, provides that "every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required, under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board." Section 3 of Part III., as amended by section 8 of chapter 571, Acts of 1912, provides that "the Board may make rules not inconsistent with this act for carrying out the provisions of the act."

It was the evident intention of the Legislature to exempt from the inducement or coercive features of section 2, Part I. of the Workmen's Compensation Act, the employers of farm laborers. Farm laborers are specifically mentioned in Part I. of the act, the Legislature evidently feeling that employers of this class of employees should not be coerced into assuming the added burden of insurance, and hence the provisions that are practically used as a club to drive other employers in under the act, namely, the removal of the three defenses above named, was not made applicable to them. In fixing the status of these particular men whom Tappan wished to insure, the ruling of the Industrial Accident Board of Sept. 12, 1912, which may be considered a fair interpretation of the meaning of the act as it appeared to the members of the Industrial Accident Board, may be cited. The Board, through its secretary, advised Messrs. John C. Paige & Co., of 65 Kilby Street, Boston, Mass., as follows: "We have yours of the 16th inst., and without prejudice to any matter that may be presented to the Industrial Accident Board for formal action, I desire to advise you that 'market gardeners' employees operating teams which

bring the produce to Boston' are probably farm laborers within the meaning of the words as used in section 2, Part I. of the Workmen's Compensation Act, and, therefore, not covered by the law." Again, on Jan. 9, 1913, in a letter addressed to Messrs. Perry, Jenney & Potter, 57 William Street, New Bedford, Mass., the Industrial Accident Board ruled: "It is the opinion of the Industrial Accident Board that the words 'farm laborers' are to be given a liberal construction; in other words, it was the intention of the act to exclude from its meaning men who were engaged in farm labor; and we therefore think that the employee in the case you put — of the farm laborer cutting wood or logs for use on the farm, or wood and logs to be sold — would not be included within the meaning of the Workmen's Compensation Act. It seems to us that cutting wood and logs is just as much a part of farm labor, within the fair intent of the law, as the planting and harvesting of crops; and it makes no difference if this wood is to be sold on the market. Neither do we think that a farm laborer ceases to be such because he is incidentally engaged in peddling milk or cutting ice for the purpose of keeping his milk."

While these rulings were dicta, not having the effect of decisions, nevertheless I believe that they are correct in principle and applicable to this case, and that the refusal of the majority so to rule in accordance with the fourth request is an error.

These interpretations of the meaning of the law were meant to advise insurance companies and attorneys as to the opinion of the Industrial Accident Board as to what was a fair construction of the term "farm laborer."

It appears in the evidence that Tappan *et al.* insured so-called "drivers and helpers." It also appears that these so-called "drivers and helpers" were farm laborers, and in no way distinguishable from the other farm laborers, save that it was a part of their duty to haul the produce to market and market it, as it was also a part of the duty of others on the farm to milk the cows and care for the milk, both being parts of farm labor under a fair construction of the term as ruled by the Industrial Accident Board in the two cases cited above. If the Legislature intended to create a special class of farm la-

borers whom the employer should be induced to insure, some provision would have been made in the act for that class of employees.

The Legislature clearly intended to leave the farmer exactly where he was before the Workmen's Compensation Act became a law if he did not insure. The majority opinion of the Board states: "It intended to exclude his farm laborers from any rights or benefits under the act, and to exempt the farmer from all liability under the act; and so, if the 'drivers and helpers' whom Tappan intended to insure were not farm laborers while engaged in the work of driving, loading and unloading the teams, he had the right to insure them, without subjecting himself to any additional liability to his farm laborers." It would, therefore, appear, if this statement is correct, that if they were not farm laborers because engaged in carrying produce to the market, then all employees of farmers who carry products of the farm to market are not farm laborers, and the burden is upon their employers to insure them, or be called upon to respond in damages, with their defenses removed, if they are injured in the course of their employment.

The Industrial Accident Board has never questioned the right of employers, either of domestic servants or of farm laborers, to insure under the act if they so elected, but there is nothing in the act, either in express terms, or by a fair construction of the meaning of the act, which forbids the employer of farm labor to become a subscriber under the act, provided he accepts the act as the Legislature intended every employer to accept it, subject to all of its requirements if he is to receive all of its benefits.

I cannot agree with the opinion of the majority that "the very plain language of the act fairly construed, which makes the employer liable for all of his employees if he becomes a subscriber by insuring any of them, so that in ordinary cases, if an employer becomes a subscriber as to a part he becomes a subscriber as to all of his men, applies only to the ordinary employer, the employer who is engaged in some business other than farming or the running of a household." The farmer is in a class by himself so long as he does not choose to avail himself of the provisions of the Workmen's Compensation Act.



If he does so elect, he must accept the Workmen's Compensation Act as the Legislature intended that every employer should accept it, to insure under the act and become subject to its provisions and its benefits. I think that the principle which is enunciated in the majority report, if carried out to its logical conclusion, namely, that "the farmer who may think that one man upon his farm, while driving a vicious bull or operating a mowing machine, or engaged in some other undertaking, is in a peculiar place of danger and should be protected, and that he has the right to so protect him and save himself from possible bankruptcy without protecting others of his employees who are not so exposed to any special hazard," would apply with equal force to any employer, whether a farm laborer or in an industrial pursuit, and that this would open the door for a practical wiping out of the benefits of the Workmen's Compensation Act for hundreds and thousands of employees whose employers might so elect to extend the benefits of this act only to those engaged in specially hazardous employments, and leave unprotected the thousands of other employees not in a particularly hazardous employment. The law was not enacted to protect only those exposed to any special hazard; it is broader than that, and must be construed in as broad a way as its provisions seem to require. The Workmen's Compensation Act makes no distinction of hazards, neither was it designed solely for the protection of an employer against a possible bankruptcy, nor to limit the field of its operations only to those subject to special hazard in their employment.

It is true that farmers are not induced by section 2 of Part I. to come in under the act, yet they are given the right voluntarily to take advantage of it if they wish. They can come in under the act or stay out, but if they come in they must be bound by the language of the act, and must afford protection to all of their employees, and not to those who possibly may be exposed to a particular hazard.

What was the intention of the Legislature in exempting from the inducement or coercive features of section 2 of Part I. of this act employers of domestic servants and farm laborers? It was evidently their intent to make it possible for them not to incur the extra expense of insurance, which might be a bur-

den, particularly upon the smaller employers, but it provided a way whereby if they saw fit, after carefully weighing the advantages to be derived by accepting the provisions of the act, they might, if they chose, avail themselves of this permission and become subscribers, thereby limiting their liability to the amount of premiums paid.

The employee in this case comes fully under the definition of "employee," as stated in section 2, Part IV. of the Workmen's Compensation Act, working as he was "in the usual course of the trade, business and occupation of his employer."

It might be held that a domestic servant was entirely outside of the operation of all parts of this act by reason of the definition in said section 2, Part IV., which provides that "employee" shall include every person in the service of another except one whose employment is not in the usual course of the occupation of his employer.

Moreover, it is possible that a domestic servant of a householder was meant to be treated as an "employee" under this act if the householder chose to become a subscriber, as section 6, Part IV., authorizes, which provides that "any employer in the commonwealth may become a subscriber."

But however this might be in the case of a domestic servant, there is not a doubt but that the employee in this case comes fully within the definition as stated by section 2, Part IV. of the act, and in this particular differs from a domestic servant.

As it was the evident intent of the Legislature to exempt from the inducement or coercive features of section 2 of Part I. of the Workmen's Compensation Act the employers of farm labor, this decision of the Industrial Accident Board, if it be affirmed by the Supreme Court, practically serves notice on the agricultural employers of this Commonwealth that they must or should insure all those farm laborers who are engaged in carrying the produce of the farm to market, whether that means the milk which is produced and sold by the farmer in the village or town where his farm is located, whether it be the wood which he cuts from his wood lot and sells to a dealer in wood, or whether it be the crops which he raised and which he delivers either to market or to the railroad station, or to some purchaser in his immediate vicinity. In other words, this de-

cision of the Industrial Accident Board creates a new class, which was not contemplated by the Legislature, of farm laborers who are not farm laborers when engaged in carrying the produce of the farm to market or to possible customers, and a burden from which the Legislature evidently intended to relieve the farmer will be imposed upon the agriculturists of this Commonwealth by this decision. The Legislature well knew, when it exempted the farmer or the employer of farm labor from the provisions of the Workmen's Compensation Act, that he was exposed, as he always had been exposed, to possible bankruptcy by reason of damages secured by an employee for injuries received arising out of and in the course of his employment; and it left for his protection against this possible bankruptcy the three main defenses on which employers relied to protect themselves against recovery of damages through suits brought by injured employees which are removed from other employers who do not insure under the act.

I find, therefore, that Patrick Keaney, being a farm laborer whose employer had taken out a policy of insurance and become a subscriber under the provisions of the Workmen's Compensation Act, was injured by an accident which arose out of and in the course of his employment, and that he is entitled to recover the compensation fixed by the provisions of the act, of one-half his average weekly wages during the time of his entire incapacity, beginning with the fifteenth day after the accident, and to medical and hospital treatment during the first fourteen days after the accident.

DUDLEY M. HOLMAN.

*Dissenting Opinion.*

The undersigned is unable to agree with the majority of the Board. If the employer of the injured employee was a subscriber at the time the injury was received, it is my opinion that the insurance company is bound to pay compensation for the injury in accordance with section 1, Part II. of the Compensation Act. It would seem that the employer in this case must be regarded as a subscriber, and that he was so regarded both by himself and the insurance company, even though he had intended to become such to a limited extent. If the em-

employer had thus become a subscriber in the Massachusetts Employees Insurance Association, incorporated under the Workmen's Compensation Act, so called, there seems no doubt that he would thereby have become subject to the obligation to meet any assessments made by the association if the need required, in the same manner as any other subscriber, and that this would be true notwithstanding the fact that he had taken out a policy from the association intended only to apply to part of his employees. This would show that he had the status of a subscriber.

The word "subscriber" is defined and particularly referred to in the act. Section 2 of Part V. says that "subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the Insurance Commissioner as provided in section 12, Part IV. Section 3 of Part V. provides that "Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for" by Part II. of this act, and when such liability company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act; and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I., II., III. and V. and of section 22 of Part IV. of this act. If an employer who had insured only part of his employees were held not to be a subscriber under the act, it would seem that the whole system of workmen's insurance and rights to compensation under the act, both as regards employees and employers in this State, would be left in uncertainty at all times. If an employer of large numbers of persons insured all his employees, with the exception of a few whom he left out, such as office clerks, such employer would have to be held not to be a subscriber, with the consequence that neither the employer nor the great mass of his employees would be protected by the provisions of the act. The employer under such a construction of the law, under such circumstances, would therefore still be liable to suits at com-

mon law by any and all of his employees who were injured in their employment, although he had paid an insurance premium for most of them under the act; and all the employees, on their side, would have no right to compensation under the act. It would therefore seem that an employer who becomes a subscriber for any part of his help must have been contemplated, as a practical matter, to have become thereby a subscriber for *all* his help. This construction of the law seems to be the only one that is in harmony with its general purpose and policy. This construction also seems required by the express provisions of the act, and the relation of its different parts to the scheme as a whole. Section 5 of Part I. states that "an employee of a subscriber" shall be held to have waived his right of action at common law if he has not given his employer a written notice claiming such right. If the employees of a subscriber are held by the operation of this act to have waived their rights of action at common law, they certainly, on the other hand, must be held to have been given by the law their right to compensation as an equivalent. Section 1, Part II., states explicitly that "If an employee . . . receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of his injury." It also appears from section 17, Part III., that "If a subscriber enters into a contract with an *independent contractor* to do such subscriber's work, . . . the association shall pay to the employees of such independent contractor, or the employees of a sub-contractor, any compensation which would be payable to them under this act if the independent or sub-contractors were subscribers." It would seem from this section that all of the employees of an independent contractor, or of a sub-contractor, who were doing the work of a subscriber, were contemplated by the act *en masse* to be entitled to compensation from the insurer of the subscriber. If all such employees as these, who are *indirectly* doing work of the subscriber, are entitled to compensation, it would certainly seem that all those who are *directly* employed by the subscriber are equally intended to be entitled to compensation in case of injuries. Furthermore, section 20, Part IV., requires that "every subscriber shall as

soon as he secures a policy give notice to *all* persons under contract of hire with him that he has provided for payment to *injured employees* by the association;" section 21, Part IV., that "he shall give notice to all persons about to enter into any contract of hire with him that he has provided for payment to injured employees by the association."

I am therefore of the opinion that for the above reasons the injured employee in this case is entitled to compensation, as he received a personal injury arising out of and in the course of his employment, and his employer was a subscriber at the time of the injury.

The contention that section 2 of Part I. deprives the employee of compensation does not seem to be valid, as this section simply provides that certain defenses shall not apply in *actions at law* brought by domestic servants or farm laborers against their employers. If this employer, who was a farmer, had not accepted the act by insuring thereunder, this section would have left his employees exposed to the old defenses in their actions at law against him for personal injuries; but inasmuch as this employer has elected to become a subscriber, there is nothing in the act which provides that the consequences of such election by him are different from those which follow the election of any other subscriber. Employees of a farmer come within the definition of an employee, as stated in section 2 of Part V., as fully as those of any other employer; and section 6 of Part IV. provides that "any employer in the commonwealth may become a subscriber."

It would also appear, from the history of workmen's compensation acts in the United States since that of New York was declared unconstitutional in *Ives v. South Buffalo Ry.*, 201 N. Y. 271, *Bradbury's Workmen's Compensation*, Introduction, XXXI, that these acts were made elective in form to avoid constitutional objections, but that their general intent remained the same, — to make their application as nearly universal and compulsory as was permissible, — such a general scheme of compensation law being regarded as in accordance with sound public policy and the general welfare.

DAVID T. DICKINSON.

CASE No. 49.

SUSAN V. ALLEN, *Employee.*

ELASTOID FIBRE COMPANY, *Employer.*

GLOBE INDEMNITY COMPANY, *Insurer.*

DOUBLE COMPENSATION AWARDED AN EMPLOYEE, THE DANGEROUS CONDITION OF THE MACHINE BEING WELL KNOWN TO FOREMAN.

The evidence indicated that the employee was directed to finish a certain lot of work which had accumulated, being required to operate a machine which was in a dangerous condition.

*Held*, that the employee was entitled to double compensation, this being serious and wilful misconduct on the part of the subscriber, as provided by section 3, Part II. of the act.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Susan V. Allen v. Globe Indemnity Company, this being case No. 49 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, John J. Flynn, representing the employee, and Thomas F. Kearns representing the insurer, heard the parties and their witnesses at the committee room, City Hall, Waltham, Mass., on Tuesday, Dec. 17, 1912, at 10 A.M.

Susan V. Allen, employee, was on July 1, 1912, injured in the course of her employment by having her finger crushed in a machine which she was operating. She was disabled from July 1 until August 5, on which date she returned to work. The injured finger is disfigured and still stiff, but she is able to work, and since she returned to work has been able to earn as much money as she did before the accident. The evidence showed that the injured employee was working on a machine which was out of order, one of the parts which automatically operated to push the material under a punch being off the machine; and to operate the machine it required that the girl should insert her hand and push the work round with her fingers, and to do this the safety guard had to be removed. The condition of the machine and the danger to the employee

was well known to the foreman, and, knowing this, he directed the girl to finish a certain lot of work which had accumulated, and as a consequence the accident which resulted in the injury occurred. It appeared that the report made by the Elastoid Fibre Company as to the accident admitted that the action of the foreman in allowing the press to be run was careless.

The approval of the subscriber to the arbitrator for the insurance company having been obtained, as required by section 5, Part III. of the act, it was held that Susan V. Allen, employed by the Elastoid Fibre Company, was on July 1, 1912, injured in the course of her employment, resulting in disability for five weeks, from July 1 to August 5, and is entitled to a compensation therefor at the rate of one-half her average weekly wages (\$9), amounting to \$13.50; and in addition, in accordance with section 3, Part II., the amount of disability compensation is doubled, making the total award \$27, the injury being by reason of the serious and wilful misconduct of a person regularly intrusted with, and exercising the power of, superintendence.

EDW. F. MCSWEENEY.

THOMAS F. KEARNS.

JOHN J. FLYNN.

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CASE No. 50.

JENNIE E. WELCOME, *Employee.*

MEYER JONASSON & Co., *Employer.*

ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

IMPARTIAL PHYSICIAN CALLED UPON TO ASSIST IN DETERMINING WHEN INCAPACITY FOR WORK CEASED.

The employee received compensation for a certain period, and then the insurer, upon receipt of a report from its examining physician, suspended payments. A request for arbitration was received, and an impartial physician was called upon to file a report with the Board.

*Held*, that further incapacity existed, and compensation ordered paid to a specified date, when all incapacity for work as a result of the injury will cease.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jennie E. Welcome *τ*.



Ætna Life Insurance Company, this being case No. 50 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, Paul M. Foss, representing the insurer, and Joseph T. Bishop, representing the employee, both of Boston, Mass., heard the parties Wednesday, Dec. 18, 1912, at 10 A.M., at the hearing room of the Industrial Accident Board, Boston, Mass.

The injured employee had been paid compensation under an agreement with the insurance company up to and including Nov. 12, 1912. Payments were suspended by the insurer upon the report of Dr. Hartung, examining physician for the insurance company. The arbitration was then requested, and the evidence at the hearing being contradictory, a third physician was called upon in the person of Thomas F. Leen, M.D., and his report is as follows:—

On Dec. 31, 1912, I examined Mrs. Jennie E. Welcome at my office and found her suffering from loosening of her left sacro-iliac joint, probably not due to her accident, as the place in her left back, where she was injured "by the form" striking her, was considerably higher as she described it. Also, she complained of some tenderness of the skin just below the left twelfth rib, resulting from the accident, but the motions of her spine were normal. Though she has difficulty to a slight degree when walking, due to the loose joint mentioned above, I feel that in about a week she should be able to do her store work.

At a conference of the arbitration committee, held Monday morning, Jan. 6, 1913, the chairman was authorized to discuss the case with Dr. Leen, and he then said that there was some doubt as to whether the condition existing was due to the injury sustained, but that it was possible for such a condition to have resulted from the injury received September 16, while in the employ of Meyer Jonasson & Company.

The decision of the committee is that the employee is entitled to compensation from Nov. 12, 1912, to Jan. 7, 1913, inclusive, at the rate of five dollars per week.

JOSEPH A. PARKS.  
JOSEPH T. BISHOP.  
PAUL M. FOSS.

CASE No. 55.

WILLIAM S. GOULD, *Employee.*

B. F. STURTEVANT COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

**EMPLOYEE NOT ENTITLED TO COMPENSATION FOR AN INJURY  
ARISING OUT OF AND IN THE COURSE OF HIS EMPLOY-  
MENT OUTSIDE OF STATE. SUPREME JUDICIAL COURT SO  
FINDS.**

The employee, a citizen and resident of Massachusetts, whose contract of hire was made in this State, while in the employ of a corporation organized and with its usual place of business in Massachusetts, received an injury arising out of and in the course of his employment while working in the State of New York.

*Held*, that the Workmen's Compensation Act has extra-territorial effect, and that the employee was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Decision.* — The Supreme Judicial Court reverses the findings of the Industrial Accident Board.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William S. Gould v. American Mutual Liability Insurance Company, this being case No. 55 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, John H. Harwood, representing the insurer, and Lyman R. Gould, representing the employee, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Tuesday, Dec. 17, 1912, at 10 A.M.

The evidence submitted was substantially as follows, which is found by the committee to be the facts: —

The employer is a corporation organized and with its usual place of business in Massachusetts, and has been such during the period hereinafter mentioned; the employee is a citizen and resident of Massachusetts, and was such at the time of his

making his contract of employment with his employer, about fourteen years ago, and also at the time his injury was received, as hereinafter mentioned.

His position was that of erecting superintendent. He worked through the New England States in connection with his duties, installing machinery and supervising the men who worked with him. When not on the road he worked at the plant of his employer in Massachusetts, testing engines and setting up machinery.

On Sept. 28, 1912, he received an injury which arose out of and in the course of his employment while working in the State of New York. He was then engaged in setting up a machine, and without any fault of his own or his employer suffered a fracture and strain of the ligaments of his knee joint, so that he was totally incapacitated from work, and required medical services. His average weekly wages during the year preceding the injury were \$22.50. He returned to work for his employer on the 9th of December, 1912, his incapacity having then apparently ceased.

Due notice was given by the employer that it had insured its employees under the provisions of the Workmen's Compensation Act, with the above-named insurer, and no claim was made by said employee of his right of action at common law within thirty days of notice of such insurance. The notice by him of his injury and the claim for compensation under said act were duly made.

The committee finds and decides that the injury which he received arose out of and in the course of his employment, and that compensation is due him from the insurer at the rate of \$10 per week for the period of eight weeks and one day, amounting to \$81.43, together with the reasonable charges incurred by him for medical services during the first two weeks after the injury, amounting to \$25, — aggregating \$106.43.

DAVID T. DICKINSON.  
JOHN H. HARWOOD.  
LYMAN R. GOULD.

*Finding and Decision of Industrial Accident Board on Review.*

After due hearing at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Wednesday, Jan. 8, 1913, the Industrial Accident Board affirms and adopts the findings of the committee of arbitration, and further expressly finds and decides as follows: —

The employee was a citizen and resident of Massachusetts, the employer a Massachusetts corporation, and the contract of employment was made in the Commonwealth of Massachusetts; and while still a resident and citizen of Massachusetts the employee accepted the benefits of the Workmen's Compensation Act; and while so employed received an injury in the State of New York, arising out of and in the course of his employment. He was principally employed in Massachusetts, but at times incidentally worked in New York and other States in the course of his employment. The Board finds that he is entitled to compensation to the amount of \$81.43, together with reasonable charges incurred by him for medical services during the first two weeks after the injury, amounting to \$25, — a total amount of \$106.43.

In our opinion, the employer and employee, as well as the insurance company, entered into a contractual relation by the employee accepting his rights under the Workmen's Compensation Act, and surrendering his rights under the common law and statutes of the Commonwealth. Many employees in Massachusetts, under similar circumstances, in the discharge of their duties are sent into neighboring States to do the work for which they are hired, and if, in such cases, the Workmen's Compensation Act has no application, many such employees would be left without compensation for injuries, which would be an unjust discrimination, as compared with others who receive compensation for injuries while working for the same employer in the same industry, and when in no way more deserving. Furthermore, the insurance company, in this present case, has been paid by the employer and received the premium for insuring and covering the hazard of all injuries sustained by this employee and his fellow employees, which might be received in the course of their employment, whether the same

were received within or without the Commonwealth of Massachusetts. A copy of the policy is hereto annexed.

One of the underlying principles of the Massachusetts Workmen's Compensation Law, and perhaps the principal one, seems to be that the compensation to employees for injuries received in the course of their employment, as stated in the act, should be paid as a legitimate part of the cost of business, without regard to questions of tort or negligence, and it is just as much a legitimate part of the cost of business whether the injury is received when the employee is working for his employer in one place or another.

Section 1 of Part II. of the Massachusetts act provides that all employees who receive personal injuries arising out of and in the course of their employment shall be paid compensation if the employer is insured under the act at the time of the injury, and section 2 of Part V. provides that "employee" shall include every person in the service of another under any contract of hire, only excepting those whose employment is but casual or not in the usual course of the trade, business, profession or occupation of his employer.

While under Part III., section 7 of the act, it is provided that the hearings of the arbitration committee shall be held in the city or town where the injury occurred, in our opinion this provision was merely intended for the convenience of employees injured in Massachusetts, and not as an exclusion of Massachusetts employees, who happened to be injured while in the course of their employment outside of the State, from compensation; and there would be no inherent difficulty in the way of holding the hearings within the Commonwealth of Massachusetts in such cases. This same point, as to the place of hearing, would arise where personal injuries are suffered on the high seas, as in cases like *The Hamilton*, 207 U. S. 398, to which the compensation act should extend, as they are covered by no other jurisdiction.

The English statute has been held to have no extra-territorial effect, but that statute differs in several important essentials from the Massachusetts Workmen's Compensation Act, one of these being that while the English act is compulsory, the Massachusetts act rests on mutual consent and election,

the rights and liabilities on one side being practically in exchange for and in consideration of those on the other. The English decision also turned on the interpretation of the intent of the English act, it being held by the court that if the intent to give the English act an extra-territorial effect had been manifest by its terms, the decision would have been different. (*Tomalin v. S. Pearson & Son, Ltd.*; *Butterworth's W. C. Cases II*, p. 1, at page 4; *Ruegg's Employers' Liability and W. C. Law*, 8th Ed., 305 *et seq.*)

No new compensation act has been enacted in the State of New York since the decision in the *Ives* case. (201 N. Y. 271, in the year 1910.)

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

*Copy of Policy annexed.*

No. 232 W. C., MASS.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY OF BOSTON, MASS.

*Workmen's Compensation Policy (Massachusetts).*

*Whereas*, the B. F. Sturtevant Company, hereinafter called the Insured, has paid to the American Mutual Liability Insurance Company, hereinafter called the Company, the sum of                      dollars, as advance cash premium, computed on an estimate of wages to be expended by him during the term, hereinafter called the Policy Term, beginning at midnight on the thirtieth day of June, 1912, and ending at noon on the first day of July, 1913, and by accepting this policy has bound himself and his legal representatives to pay in addition thereto such sums as may be assessed by the Directors of the Company in conformity with the Laws of Massachusetts and the By-Laws of the Company, but not to exceed in the whole an amount equal to and in addition to the said cash premium: —

*This policy of insurance witnesseth* that the Company does hereby agree to pay the compensation and to furnish the medical and hospital services and medicines provided for by Part II. of chapter 751 of the Massachusetts Acts and Resolves of 1911, as amended (*Workmen's Compensation Act*), to any person or persons to whom such compensation or services shall become due, and to indemnify the Insured, under provisions of section 22 of Part IV. of said act, for or on account of personal injuries, including death resulting at any time therefrom, received or suf-

ferred by any employee or employees of the Insured, or of a contractor or sub-contractor as defined by section 17 of Part III. of said act, within the Policy Term.

*Classification Schedule of Business Operations.*

LOCATION OF EACH BUILDING, FACTORY, SHOP, YARD OR PLACE WHERE THE TRADE, BUSINESS, PROFESSION OR OCCUPATION WILL BE CONDUCTED.	Kind of Trade, Business, Profession or Occupation (Manual Classification).	Estimated Earnings.	Premium Rate.	Estimated Premium.
Hyde Park and Boston, Mass.,	Gas, steam and hot water apparatus, fitters and installation of ventilating plants, including shop pay roll.	-	-	-

Additions to, alteration and repair of Insured's existing buildings or plants (not maintenance of equipment covered as manufacturing operation), excluding the erection or demolition of structural steel or the construction of sewers, tunnels, dams, shafts or subways. (See Paragraph D.)

*Office Employees.*

WHERE EMPLOYED.	Estimated Number.	Estimated Earnings.	Premium Rate.	Estimated Premium.
Hyde Park and Boston, Mass., . .	-	-	-	-

*In witness whereof*, the Company has caused this Policy to be signed by its President and Secretary, at its office in Boston, this twenty-first day of September in the year one thousand nine hundred and twelve.

RUSSELL GRAY,  
President.

DONALD B. WARD,  
Secretary.

*Decree of Supreme Judicial Court on Appeal.*

RUGG, C.J. This is a proceeding under the Workmen's Compensation Act, St. 1911, c. 751, and St. 1912, cc. 571 and 666.

1. At the threshold lies a question of practice. The insurer, being a party in interest, presented its petition to the Superior Court, together with certified copies of the decision of the Industrial Accident Board. The petition alleges the interest of the employee, employer and insurer, the date of the decision, and the insurer's desire to have determined questions of law set out in the decision. Part III., section 11, as amended by St. 1912, c. 571, § 14, provides that "any party in interest may

present certified copies of an order or decision of the board . . . and all papers in connection therewith to the superior court . . . whereupon said court shall render a decree in accordance therewith, and notify the parties. Such decree shall have the same effect, and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom on questions of fact." While this section does not require anything more than the bare presentation of the copies of the designated proceedings of the Industrial Accident Board, it is not improper that a petition be filed setting forth briefly the nature of the questions to be decided. When the case came on to be heard in the Superior Court a decree was entered in accordance with the decision of the Board. The judge also allowed a bill of exceptions, stating that it was for the purpose of enabling this court to determine the proper manner of bringing before it proceedings of this sort.

The Workmen's Compensation Act has a procedure all its own. Where the act is adopted by the parties, a relation arises between the employee and the employer under which, in the event of a personal injury to the employee, there shall be speedy ascertainment of the new kind of compensation created by the act, coupled with a voluntary relinquishment by both parties of the right to trial by jury as to matters covered by the act. One main purpose of the act is to establish between employee and employer, in place of the common law or statutory remedy for personal injury, based upon tort, a system whereby compensation for all personal injuries or death of the employee received in the course of and arising out of his employment, whether through unavoidable accident or negligence or otherwise (except through his serious and willful misconduct), shall be determined forthwith by a public board, and paid by the insurer. For the accomplishment of these ends a simple method is furnished, operating without delay or unnecessary formality. The practice should be direct and flexible in order to adapt the remedy to the needs of the particular case. In one aspect a case under the act resembles an action at law, for it seeks ultimately the payment of money. Payments, however, in most instances are by installments. In



another aspect it is akin to the specific performance of a contract, designed to cover the whole range of misfortunes likely to arise in the course of employment in a State with many and diversified industries. Moreover, the compensation is to be paid not directly by the employer, but by the insurer, who is either the "Massachusetts Employees Insurance Association," created by Part IV. of the act, or any liability insurance company authorized to do business within the Commonwealth. The employee has no immediate relation with the insurer. He is the beneficiary under a contract between the employer and insurer. A beneficiary under any instrument to which he is not a direct party more naturally looks to equity rather than to law for relief. Part III., section 11, requires a "decree" to be entered, and refers to the proceeding as a "suit." A decree in our practice is entered commonly in equity alone. Judgment is the word expressive of the end of an action at law. Suit, while a word of comprehensive signification, is applied usually in our practice to proceedings in equity, while action is the word descriptive of proceedings at law. Our statutes in general, although perhaps not with absolute uniformity, refer to proceedings in equity as suits (see R. L., c. 159), and to those at law as actions (see R. L., c. 167). Giving due weight to the equitable phraseology employed in this section, to the beneficent purposes of the act, which can be enforced better through the relief afforded by equity, and to the character of the proceeding itself and the parties thereto, it follows that in the main, causes under the act in court should be treated as equitable rather than legal in nature, procedure and final disposition.

The act provides only for an appeal, and makes no reference to exceptions. Although exceptions are permitted in our system of equity, that is a statutory engraftment, not according to general chancery procedure, and appeal is simpler and on all grounds better practice. But where exceptions are taken, there can be no final decree until exceptions are disposed of. The present act, however, requires a decree, which in the ordinary case must be final in its nature, to be entered by the Superior Court. This precludes the possibility of exceptions. It follows that the suit must be brought here by appeal from the decree of the Superior Court, and not by exceptions. As ex-

ceptions could not be allowed legally, the case is here rightly on appeal.

2. The facts are that the employee, a citizen and resident of this Commonwealth, made a contract here with the employer, a Massachusetts corporation, for rendering to it his personal services, and accepted the benefits of the act. In the course of his employment he received the injury for which this claim arises, in the State of New York. He was principally employed in Massachusetts, but at times incidentally worked in New York and other States. The Industrial Accident Board found that the insurer had been paid by the employer for insuring all injuries received by its employees in the course of their employment, whether within or without the Commonwealth. This factor is not of much significance because the obligation of the policy does not refer to anything occurring outside the State, and provides only for performance of the requirements and payment of the compensation designated in the act. If the act enjoins the payment of compensation for injuries received outside the State, the insurer has contracted therefor, otherwise it has not.

The question is whether the act governs the rights of parties touching injuries received outside the State. It may be assumed, for the purposes of this judgment, that it is within the power of the Legislature to give to the act the effect claimed for it by the employee. (*Mulhall v. Fallon*, 176 Mass. 266.)

The point to be decided is whether the language used in the act indicates a purpose to make its terms applicable to injuries received outside the State. This must be determined by a critical examination of the words of the statute in the light of its humane purpose. There is nothing which expressly states that the act governs the rights of the parties touching such injuries. This is significant. In the absence of unequivocal language to the contrary, it is not to be presumed that statutes respecting this matter are designed to control conduct or fix the rights of parties beyond the territorial limits of the State. (*Boston and Maine R.R. v. Trafton*, 151 Mass. 229; *Howarth v. Lombard*, 175 Mass. 570, 572; *Young v. Boston and Maine R.R.*, 168 Mass. 219; *Stone v. Old Colony St. Rly. Co.*, 212 Mass. 459-464; *Merrill v. Boston and Lowell*, 63 N. H.

259-260.) Part I. of the act, which is entitled "Modifications of Remedies," and which abolishes certain common rights of action and defenses for "subscribers" and their employees who do not claim such rights in writing, can relate only to injuries received within the Commonwealth. The correlative provisions which follow, and which are substitutional in their nature for the common law remedies and defenses, naturally would be expected to cover the same field in the absence of clear words indicating a larger scope.

A consideration of the act in detail fails to disclose any plain intent to that end. On the contrary, several provisions indicate solely intrastate operation. Part II., section 19, provides that the employee who has received an injury shall submit himself, on request, to an examination "by a physician or surgeon authorized to practice medicine under the laws of the commonwealth." It hardly can be inferred from this language that the Legislature intended that physicians or surgeons from Massachusetts should journey to the place of injury, or that those authorized to practice under the laws of other States should make the examination. Part III. of the act, which relates to procedure, and which, as has been pointed out, creates a wholly new method of procedure, deals only with boards and courts within this Commonwealth. No provision is made for enforcing rights as to injuries occurring outside the State. Part III., section 7, requires that the hearings of the committee of arbitration "be held in the city or town where an injury occurred." Obviously this cannot relate to injuries received outside this Commonwealth. Section 2 as amended by St. 1912, c. 571, provides that in the event of resort to the courts copies of the papers shall be presented "to the superior court for the county in which the injury occurred, or for the county of Suffolk." The words "for the county of Suffolk" may be presumed to be inserted for convenience, as the offices of the Industrial Accident Board are in Suffolk, and courts are continually in session in that county, and not for injuries occurring outside the State. Section 18 requires the employer, within forty-eight hours, not counting Sundays and legal holidays, after the accident resulting in personal injury, "to make a report in writing to the Industrial Accident Board." Part IV.,

section 18, authorizes the directors of the Massachusetts Employees Insurance Association, created by the act, to make and enforce reasonable rules and regulations for the prevention of injuries on the premises of the subscribers, "and to this end its inspector shall have free access to such premises during working hours." This section is in furtherance of that part of the purpose of the act, as set forth in its title, for the prevention of industrial injuries; but it cannot be operative outside of Massachusetts.

Moreover, our act discloses no purpose to exempt from its operation nonresident employees of alien employers who, while working within this Commonwealth, may receive personal injuries arising out of and in the course of employment. If our act is to be interpreted as having extra-territorial force, similar effect must be accorded to like laws of other States. There would be difficulty in reading such an exception into the phrase of our statute. By Part II., section 20, of the act agreements by employees to waive the provisions of the act are made invalid. This section does not easily permit the inference that contracts under the statutes of other States, to abide exclusively by the terms of such statutes, were thought of and intended to be excepted by the Legislature. The definitions of our act evidently were not framed with the end of covering the matter now under discussion. "Employee" is defined as including "every person in the service of another under any contract of hire," with certain exceptions. (Part V., section 2, paragraph 3.) See St. 1913, c. 448, the natural significance of which is that it includes a service being performed in this Commonwealth. Section 21, to the effect that no payment under the act shall be liable in any way for debts of the employee, does not readily lend itself to the idea that the Legislature intended the act to have extra-territorial force. Great difficulties might arise in establishing such an exemption elsewhere.

These provisions collectively disclose a purpose to confine the operation of the act to the territory of this Commonwealth. They fall far short of manifesting a plain legislative intent to control the relations of parties as to injuries received outside of Massachusetts.

This conclusion is confirmed by other considerations, which point to the improbability that the Legislature would have expressed such an intention (if it existed) in any but the plainest words.

It is apparent, from a comparison, that our own follows in important particulars the provisions of the English act. That act (although it has been held generally to be inoperative outside the United Kingdom) in express terms applies to masters, seamen, apprentices in the sea services under certain conditions, and definitely points out the manner of proving and enforcing claims for injuries occurring therein with reference plainly to those outside the United Kingdom. (See 6 Edward VII. (1906), c. 58, § 7.) If it had been the intention of the Legislature to include such injuries within the purview of the act, definite language in the English act to this end hardly would have been overlooked. Workmen's compensation acts had been enacted in many foreign countries before 1911, and the texts of these had been printed in a report of the United States Commission of Labor, and (as shown by the report of the Massachusetts Commission on Compensation for Industrial Accidents) were known to the framers of our act. Several of these foreign acts made definite and careful provision respecting accidents outside their territory.<sup>1</sup> It is a violent assumption, under these circumstances, that the Legislature intended its similar law to apply to injuries received in foreign jurisdictions without express words to that effect.

The subject of personal injuries received by a workman in the course of his employment is within the control of the sovereign power where the injury occurs. "It must certainly be the right of each State to determine by its laws under what circumstances an injury to the person will afford a cause of action." (Davis v. N. Y. & N. E. R.R., 143 Mass. 301; see Corno v. Boston Bridge Works, 205 Mass. 366.) Most of the compensation acts of the States of the Union contain no pro-

<sup>1</sup> France Acts of 1898, 1902, 1905 and 1906, Title III., 24th Annual Report of U. S. Com. of Labor, Vol. 2 (1909), p. 2501. Austria Law of 1894, art. II.; *Id.*, pp. 2456, 2457. Belgium Act of 1903, art. 28; *Id.*, p. 2464. German Law of 1900 (a), art. 4; *Id.*, p. 2517. (See also German Ins. Code of 1911, art. 157, translated in Boyd on Workmen's Compensation, *Id.*, p. 1252.) Hungary Act No. XIX. of 1907; *Id.*, p. 2569. Italy Law of 1904; *Id.*, p. 2617. Luxemburg Law of 1902, art. 3; *Id.*, pp. 2621, 2622. Netherlands Law of 1901, art. 9; *Id.*, p. 2641. New Zealand Act of 1908 (a), sec. 11; *Id.*, p. 2664. Queensland Act of 1905 (a), sec. 2; *Id.*, p. 2687. Transvaal Act of 1907, sec. 1; *Id.*, p. 2720.

vision respecting injuries received in a foreign jurisdiction, although several exempt persons engaged in interstate commerce where federal laws shall be construed to furnish exclusive remedies (Ill. Sts. of 1911, pp. 314-326, sec. 2; Kansas St. of 1911, c. —, § 7; Michigan Laws of 1912, No. 3, Part VI., § 4; Washington Laws of 1911, c. 74, § 18), while some expressly limit the operation to employment within the State. (Nevada Laws of 1911, c. 183, § 3; Washington Laws of 1911, c. 74, § 2; Wisconsin Laws of 1911, c. 50, § 1.)

Workmen's compensation acts have been discussed generally throughout this country. It is said in the report of the Commission on Compensation for Industrial Accidents, made in accordance with Resolves of 1911, chapters 66 and 110, pages 77 and 93, that in thirteen States besides Massachusetts laws of this general character have been enacted, while in eleven others commissions have been appointed to investigate the subject and to draft laws. These various acts, although having certain features in common, nevertheless differ widely in many essential aspects. Some are compulsory. Some prohibit contracts for a different form of compensation, and make criminal, under severe penalties, failure to comply with their terms. Some provide for strict State insurance, while others do not. The amount of compensation afforded and the circumstances under which it is to be awarded differ. The diversity of public policy already manifested between the several States is considerable. To say that such acts are intended to operate on injuries received outside the several States enacting them would give rise to many difficult questions of conflict of laws. It would require a large dependence upon the comity of other States in enforcing our act and in refraining from enforcing their own as to a subject which commonly is wholly under the control of the several States, and with which, it has been pointed out, a substantial number have already manifested a purpose to deal by a new and special legislation. No court of any sister State, so far as we are aware, has had occasion to pass upon the precise question here presented.

If employees and employers from different States carry their domiciliary personal injury law with them into other jurisdictions, confusion would ensue in the administration of the law, and at least the appearance of inequality among those

working under similar conditions. If such a result had been intended by the General Court, it cannot be doubted that it would have been disclosed in unambiguous words. The trend of the development of the law, historically considered, has been away from a personal law and toward a territorial law, before which all are equal. (See General Survey of Continental Legal History, pp. 80-83.) A reversion to such an ancient theory is not likely to be inferred. It is of the essence of law, where the common law prevails, that it should be common to all similarly situated.

All these considerations combined forbid the inference that the Legislature, having failed to use plain and unmistakable words to that end, intended our act to govern the rights of the parties as to an injury received in another jurisdiction.

It has been held that the English Workmen's Compensation Act has no extra-territorial effect, save as to certain classes in shipping service (*Tomalin v. S. Pearson & Son* (1909), 2 K. B. 61; *Schwartz v. India Rubber, Gutta Percha and Telegraph Works Co.* (1912), 2 K. B. 299; *Hicks v. Maxton* (1907), 124 L. T. Rep. 135); while the contrary has been held respecting the German act (*Schweitzer v. Hamburg American Co.*, 138 N. Y. Supp. 944). The character of these acts and decisions affords no light upon the present inquiry.

This proceeding has not been brought to this court without reasonable ground, and no cost is assessed under Part III., section 14. Decree should be entered to the effect that the employee has no claim against the insurer. The exceptions must be dismissed.

*So ordered.*

CASE NO. 56.

LAWRENCE T. FITZGERALD, *Employee.*

BOSTON ELEVATED RAILWAY COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

#### EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY.

The sole question involved in this case was the date when the incapacity for work of the employee as a result of the injury ceased.

*Held*, that the employee was entitled to compensation on account of incapacity for work in accordance with the evidence.

• *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Lawrence T. Fitzgerald *v.* Massachusetts Employees Insurance Association, this being case No. 56 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, John J. Attridge, representing the employee, and F. Walker Johnson, representing the insurer, heard the parties and their witnesses in the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Saturday, Jan. 4, 1913, at 10 A.M., and on Saturday, Jan. 11, 1913, at 9.30 A.M.

Lawrence Fitzgerald, employed by the Boston Elevated Railway Company, was injured July 29, 1912, at 10.30 A.M., while sawing an angle. The hacksaw blade broke and ran through the little finger on his left hand and inflicted a bad cut. He received \$21.60 a week, average weekly wage. There was no dispute as to the accident, nor as to the average weekly wage, the sole question being "when disability ceased."

We find from the weight of the evidence that disability ceased Sept. 8, 1912, and that Fitzgerald is entitled to recover three weeks and six days' compensation at the maximum rate, amounting to \$38.58, and the doctor's bill is hereby approved for seven visits, beginning August 3, and up to and including Aug. 11, 1912.

DUDLEY M. HOLMAN.  
F. WALKER JOHNSON.  
JOHN J. ATTRIDGE.



CASE No. 57.

FREDERICK W. COCHRAN, *Employee.*

FRED T. LEY COMPANY, INC., *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

CLAIM OF INSURER THAT EMPLOYEE WAS NOT ENTITLED TO  
COMPENSATION BY REASON OF HIS OWN SERIOUS AND  
WILLFUL MISCONDUCT DISMISSED.

The employee was injured while removing temporary "guys" from a steel tower, a sudden gust of wind arising causing the tower to collapse. The superintendent testified that he had called the employee's attention to the tower, that it was unsafe and that steel guys were available for use, but that the employee did not use them.

Held, that the employee was not injured by reason of his own serious and willful misconduct, and that he is entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frederick W. Cochran v. Contractors Mutual Liability Insurance Company, this being case No. 57 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Francis M. Doherty, representing the employee, and Franklin P. Duffee, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Worcester, Mass., on Monday, Dec. 30, 1912, at 11 A.M., this case being heard at the above place by the agreement of the parties. The employee was represented by Michael E. Henebery, Esq., of Worcester, Mass., the insurer, by Norman F. Hesseltine, Esq., of Boston, Mass.

It was agreed that the claimant was injured on Aug. 27, 1912, at 7.45 A.M. at Woronoco, in the county of Hampden, while in the employ of Fred T. Ley Company, Inc., and that his injury arose out of and in the course of his employment. The respondent, however, contended that the claimant was guilty of serious and willful misconduct.

The evidence in the case was substantially as follows: the claimant, Cochran, testified that at the time of the accident he was employed as a carpenter foreman, and was engaged in the erection of a temporary tower or elevator on a concrete building in said Woronoco; that the tower had reached a height of 65 or 70 feet; that on the night before the accident he had put temporary guys on the tower, but that they were removed to haul up steel guys; that in the interim a sudden gust of wind blew down the tower; that it was necessary to remove the temporary guys in order to haul up the steel guys, and that in his opinion the structure was safe; within a few weeks previous to the accident he had erected a similar structure at Three Rivers, Mass., without guys, to a height of about 70 feet, which remained standing; that the accident could not have occurred had it not been for the sudden gust of wind which arose, and that he was not familiar with the sudden changes in the weather conditions in this locality; that the accident happened while he and two other men were on top of the tower; one man was killed, and he and the other man were seriously injured; that immediately after the accident he was removed to the Noble Hospital, Westfield, Mass., and was attended by Dr. Edward S. Smith; that he remained there for six days, and then returned to his home in Worcester, Mass.; that he received a severe contusion of the chest walls, a severe injury to the right arm in the region of the elbow, and contusions of the left leg in the region of the knee; that the principal injury was to the right arm, on account of which he had been unable to work and is still incapacitated; and that his average wages for the past year have been \$27 per week.

Dr. Philip H. Cook testified that he saw Cochran on Oct. 26 and Oct. 30, 1912, and several times later. He found that the arm had been injured; that the extension of the arm was limited, and is still limited; that Cochran was unable to perform the duties he had formerly performed as carpenter foreman, or do any heavy work; that his arm is greatly improved since he first saw it; and that, in his opinion, the arm would be entirely recovered in about three weeks.

Dr. Irving W. Clark of Worcester testified that he had examined Cochran on Nov. 11, 1912, and that, in his opinion, he

was able to do light work within eight weeks after the date of the accident; that there was no permanent injury; and that work or exercise of a light nature would have improved the arm.

Angelo Morris of Springfield, superintendent of the said Ley company, testified that on the day before the accident he called Cochran's attention to the fact that the tower was without guys and unsafe. He also testified that there were steel guys available for use, and that Cochran should have used them, but did not do so.

We find that when Cochran was working on the tower he had no reason to expect that there would be any sudden gust of wind, and that it is probably true that the tower would have remained standing if it had not been for this fact. We also find that, in his judgment, the tower was safe without these steel guys, and that he based this judgment largely upon his prior experience with the tower constructed in a similar way at Three Rivers. We therefore find that he was not guilty of serious and willful misconduct, and is entitled to compensation from Sept. 10, 1912, to Jan. 1, 1913, at the rate of \$10 per week, which amounts to \$160.

JAMES B. CARROLL.

FRANCIS M. DOHERTY.

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CASE No. 58.

AUGUSTUS E. SCHOFIELD, *Employee.*

HANSCOM CONSTRUCTION COMPANY, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE RECEIVING INADEQUATE MEDICAL ATTENTION AND  
DIRECTION ENTITLED TO COMPENSATION DURING RESULT-  
ING INCAPACITY FOR WORK.

The compensation of the employee was suspended by the insurer, and the employee, claiming that his incapacity for work, as a result of the injury, continued, requested a hearing. It developed at the hearing that without fault on the part of the employee he received inadequate medical attention and direction.

*Held*, that the employee was entitled to further compensation during his incapacity for work, in accordance with the evidence.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the Committee of Arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Augustus E. Schofield v. Contractors Mutual Liability Insurance Company, this being case No. 58 on the files of the Industrial Accident Board, reports as follows:—

After being duly sworn, the committee of arbitration, consisting of David T. Dickinson, chairman, Edgar Hall of West Acton, and Dr. Edward L. Salmon of Maynard, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Tuesday, Jan. 14, 1913, at 2 P.M., and reports as follows:—

The question was whether the total incapacity for work of the above-named employee ceased on Nov. 18, 1912, when compensation therefor was stopped by the above-named insurer, or whether such incapacity continued thereafter. It was admitted that the injuries of said employee arose out of and in the course of his employment while engaged in unloading iron pipes from a freight car at South Acton, and that one-half of his average weekly wages, as previously agreed between the insurer and the employee, was \$7.50 per week.

The committee finds that, without fault on the part of the employee, he received inadequate medical attention and direction for several weeks following the injury, and that his total incapacity, according to the weight of the testimony, continued for two weeks after Dec. 2, 1912, viz., to December 16.

The committee finds, therefore, that he was entitled to the continuance of compensation from said Nov. 18 to Dec. 16, 1912, a period of four weeks, at the rate of \$7.50 per week, amounting in the aggregate to \$30, and that all incapacity resulting from the injury ceased on that date.

DAVID T. DICKINSON.

EDWARD L. SALMON, M.D.

I dissent from the above finding, first, for the reason that Dr. Salmon's testimony was accepted by himself as arbitrator,

ignoring entirely the testimony of the other physician. Also, Dr. Salmon admitted that claimant could have gone to work, if it did not require heavy lifting, previous to December 2. Also, Dr. Salmon admitted that the inadequate medical attention did not retard the knitting together of the fracture. Also, claimant refused to follow the advice of Dr. Christee in a gradual use of broken limb, and so shirked his own responsibility.

EDGAR H. HALL.

*Findings and Decision of the Industrial Accident Board on Review.*

The Industrial Accident Board heard the parties at the rooms of the Board, after due notice thereof, on Feb. 5, 1913, at 2 P.M.; and after due consideration of the evidence submitted affirms and adopts the findings of the committee of arbitration, excepting as follows: —

The Board finds that the employee was able to work and did actually work at the McDonald Slaughter House at Concord Junction, Mass., the week immediately prior to Dec. 16, 1912, and that said employee was able to work during the whole of said week.

The Board therefore finds that he is entitled to compensation from Nov. 18 to Dec. 9, 1912, a period of three weeks, at the rate of \$7.50 per week, amounting in the aggregate to \$22.50, and that all incapacity resulting from the injury ceased on that date, viz., Dec. 9, 1912.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 61.

JOHN IRA BENTLEY, *Employee.*

BURNHAM BROTHERS, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

WIDOW SEPARATED FROM HER HUSBAND NOT A DEPENDENT.  
MINOR CHILD A PARTIAL DEPENDENT.

The evidence disclosed the fact that the widow, with her child, left the home of the employee in June, 1908, for justifiable cause, and since that time they never lived together. The employee contributed \$2 weekly to the minor child.

*Held*, that the widow was not a dependent and that the child was a partial dependent.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Ira Bentley v. Massachusetts Employees Insurance Association, this being case No. 61 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, James W. Rollins of Boston, representing the insurer, and Daniel T. Gallagher of Boston, representing the employee, heard the parties and their witnesses in the hearing room of the Industrial Accident Board, Room 201, Pemberton Building, on Thursday, Jan. 9, 1913, at 9.30 A.M.

John Ira Bentley, carpenter by occupation, wages \$20 a week, employed by Burnham Brothers, Newton, Mass., was injured while in the course of his employment by coming into contact with a splitting-saw, which cut off his thumb and cut four fingers. As a result of the operation which followed he got "post operative" or ether pneumonia, and on Aug. 18, 1913, died as a result of this injury, which arose out of his employment.

The agreed statement of facts is as follows:—

John Ira Bentley married Julia Bentley in the year 1894.

He lived with her and supported her until June, 1908.

A child, Almira Susan Bentley, was born in 1899.

Julia Bentley and the child, Almira Susan Bentley, are now living in the town of Weston, where Julia Bentley is employed as housekeeper.

In June, 1908, Julia Bentley and the child left the house of John Ira Bentley for justifiable cause, and since that time wife and husband have never lived together, and neither the wife nor the child have since received any support from Bentley. After the separation, Julia Bentley, having no resources for her support, went to live with a sister who gave her a home for a few months. She then obtained employment, and has since been engaged in general housework and housekeeping, and in this manner has supported herself and her child, Almira Susan Bentley.

Mr. Bentley was fifty-five years old at the time of his death. His average weekly wages were \$20.

Either side may introduce additional evidence.

At the arbitration meeting and hearing held in this case on Jan. 9, 1913, Ina M. Bentley, a daughter of the deceased Bentley and his first wife, testified as to the facts of the separation. That her father was a drinking man; that his conduct was such that her stepmother, Mrs. Julia Bentley, and herself, agreed that it was impossible to continue family life, because of the father's actions, and that separation resulted, the mother going to live for a while with a relative and subsequently going to Weston, where she has been a housekeeper, and supported the minor daughter, Almira Susan Bentley, and herself. The daughter by the first wife, Ina Bentley, who is of age, is a dentist's assistant, and has been able to support herself at that profession. She testified that her stepmother was unable to be present at this hearing; that they were good friends, and that she had affection for her stepsister Almira. She further testified that there had been meetings between her father and his wife, the conversation at these meetings taking the form of the prospects of the father being able to reform and providing a home again for his family. At one time he promised to give his wife money whenever he could. The mother supported Almira, and on one occasion when the father was ill the wife had given him a pair of shoes and about \$2 in money. During the five months of the two years just previous to the death of

John Ira Bentley, he was sick on various occasions, and the daughter, Ina Bentley, had during these periods given him money to help him along.

On January 19 the mother, Julia Bentley, with the minor daughter, Almira Susan, and her stepdaughter, Ina Bentley, presented themselves at the offices of the Industrial Accident Board and said that on account of Mrs. Bentley's occupation it was impossible to get away more than once a month. Mr. Pillsbury, attorney for the Massachusetts Employees Insurance Association, participated in the examination of Mrs. Bentley and Ina Bentley.

Mrs. Bentley stated that she was a housekeeper in Weston, receiving \$3.50 a week, and in addition was given board and lodging for herself and her minor daughter, who attended school. The only contribution she ever remembered having received personally from her deceased husband was \$2, which he gave her one Sunday when she was visiting him on Springfield Street. He also gave the little girl 50 cents at that time, and promised to give her (Mrs. Bentley) \$5 if she would call the following Sunday, but she could not get away from work and never received the money. Mrs. Bentley stated that he never bought the little girl anything, but that she had received help from her stepdaughter.

Ina Bentley stated she had never helped her stepmother with money that she personally earned, because she only earned enough to support herself. During the first two or three years after the separation she received amounts of money from her father when he was working, which she in turn would give to her stepmother when she saw her. She would also pay little bills for her. During the last year her father's health had not been good and she had loaned him money when he had been sick, but this money he and she considered as a loan, which he generally paid back. He was able to maintain himself except for five months (January, February and March, 1911, and May and June, 1912). During the year before the death of her father she had visited him Saturday nights. When he had money he generally gave her \$2 every visit. Perhaps out of every eight weeks there would be two weeks when she would not receive any money from him; these would be times when



he would get drunk on a Sunday and stay so until Tuesday; then, having lost his position, he would be obliged to look for another.

The facts at the time of injury appear to be that the wife, Julia Bentley, was not in whole or in part dependent upon her husband for support.

*Held*, that the wife, Julia A. Bentley, was, at the time of her husband's death, neither in whole nor in part dependent on him, and was not entitled to compensation.

The testimony by the daughter of the first wife, Ina Bentley, was corroborated by the wife of the deceased, that during the periods when her father was earning money he gave the said Ina various sums of money, stated as \$2 each time, which she in turn gave to his wife. There is nothing in the evidence to show that this help, given to the mother, was for herself or for the minor child, or for both, but the conclusion is reasonable that such money could be considered as probably to be applied for the uses of the child. The mother, as shown in the agreed statement of facts, was able to support, and did support, herself. Her labor brought her her own living and the living of the child, and, in addition, \$3.50 a week, so that this money from the husband, through her stepdaughter, when received, must have been a very welcome addition for the purpose of buying necessities in clothing and the like for her minor daughter.

*Held*, that the minor child, Almira Susan Bentley, was a partial dependent of the deceased Bentley, and is entitled to partial compensation "equal to the same proportion of the weekly payments" which her father contributed for her support bore to his average weekly earnings at the time of his injury; and that this minor child, Almira Susan Bentley, is therefore entitled to a death benefit of \$1 per week for three hundred weeks from the date of injury.

EDW. F. MCSWEENEY.

JAMES W. ROLLINS.

I find myself unable to concur with my associates in arbitration in their findings of fact, and therefore dissent therefrom.

DANIEL J. GALLAGHER.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., Wednesday, April 16, 1913, at 3 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds, on the statement of counsel, the evidence before the full Board and the report of the committee of arbitration, that John Ira Bentley, the employee, contributed the sum of \$2 a week for the benefit of the minor child, Almira Susan Bentley, and that the said minor child is therefore entitled to a weekly payment of \$1 a week for a period of three hundred weeks from the date of the injury, being a partial dependent under section 6, Part III. of the statute, and in accordance therewith being entitled "to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury."

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 63.

FRED FETTLING, *Employee.*  
A. H. JACQUES, *Employer.*  
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

**EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY FOR WORK.**

The insurer refused to pay compensation in this case, claiming that the incapacity for work of the employee as a result of the injury had ceased. The evidence indicated that the employee had been incapacitated, as a matter of fact, for a certain definite period.

*Held*, that the employee was entitled to further compensation in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Fred Fettling *v.* Ætna Life Insurance Company, this being case No. 63 on the files of the Industrial Accident Board, reports as follows:—

After being duly sworn, the committee of arbitration, consisting of David T. Dickinson, chairman, Thomas H. Mahony, Esq., of Boston, and Paul M. Foss, Esq., of Boston, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, on Wednesday, Jan. 8, 1913, at 10 A.M., and on Thursday, Jan. 16, 1913, at 10 A.M., and reports as follows:—

The question was whether the employee, Fettling, received injuries arising out of and in the course of his employment while employed by the above-named employer, A. H. Jacques, who was insured by the said Ætna Life Insurance Company, under the provisions of the Workmen's Compensation Act.

The weight of the evidence showed and the committee finds that said employee was injured on July 19, 1912, while at work for the said employer as a foreman painter in the building of the Franciscan Convent, Newton. The injuries consisted of a wrench or sprain of the back, also a sprain of the right thumb, from falling down a flight of stairs in said building. He did some slight work following the injury, as foreman, until July 27, but was paid full wages up to that date.

The committee finds that Fettling continued to be totally incapacitated as a result of the injuries up to Sept. 10, 1912. He was incapacitated for a period of two weeks from earning full wages by reason of the injuries on Aug. 10, 1912, although the incapacity continued on from this last date to September 10, as above stated. By reason of said facts, his compensation for total incapacity begins and is reckoned from Aug. 3, 1912, which is the fifteenth day after the receipt of the injuries (July 19).

Since Sept. 10, 1912, said employee has obtained work at intervals at his occupation as painter, and the committee finds that his incapacity for work ceased on that date. He was, therefore, totally incapacitated from work, as a result of the injuries, beginning on August 3, for the period of five weeks and two days.

The committee finds that said employee was receiving as wages at the time of his injury the sum of \$20.02 per week; and on the testimony of said employee that the total work per year that painters in his grade were able to obtain on the average was for about nine months, therefore finds that the average weekly wage of said employee at the time of the injury was \$15 per week, and that he is entitled to compensation at the rate of \$7.50 per week for the period, as above stated, of five weeks and two days, aggregating \$39.65, at which time all incapacity for work ceased.

DAVID T. DICKINSON.  
THOMAS H. MAHONY.  
PAUL M. FOSS.

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CASE No. 64.

HARRY ROSE, *Employee*.  
A. S. LOWELL COMPANY, *Employer*.  
PREFERRED ACCIDENT INSURANCE COMPANY, *Insurer*.

IMPARTIAL PHYSICIAN IN ANOTHER STATE CALLED UPON BY  
AGREEMENT TO ADVISE AS TO QUESTION OF INCAPACITY  
FOR WORK OF EMPLOYEE.

The employee was a superintendent in a millinery store at the time of the injury. While writing near a settee, he arose suddenly, and striking himself against the settee, near the left anterior scroto-thigh line, caused inflammation to the femoral vein which incapacitated him. Subsequently, he went to Washington, D. C., and became a patient at a hospital there. It was agreed to request an impartial physician of highest standing there to make an impartial examination, and later the insurer and employee reached an agreement in regard to compensation.

*Held*, that the employee was incapacitated for work, in accordance with the agreement reached.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Harry Rose v. Preferred Accident Insurance Company, this being case No. 64 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, William H. Rose, M.D., representing the employee, and

Mr. Philip H. Sullivan, representing the insurer, heard the parties and their witnesses in the auditor's room, Superior Court, Worcester, Mass., on Monday, Jan. 6, 1913, at 9.30 A.M.

Harry Rose, employed by A. S. Lowell Company, 355 Main Street, Worcester, Mass., as superintendent in a millinery store, average earnings \$20 a week, on the morning of Aug. 8, 1912, was writing near a settee, and rising, turned quickly to hand something to his assistant, striking himself near the left anterior scroto-thigh line, causing inflammation of the femoral vein, which incapacitated him from employment.

Subsequently, Rose left Massachusetts and went to live in Washington, D. C., from which place conflicting reports as to his physical condition were received from Dr. E. P. Magruder, 17th and I streets, Washington, D. C., and Dr. G. M. Brumbaugh, 905 Massachusetts Avenue, N. W., Washington, D. C.

At the meeting of the arbitrators it was decided to get the opinion of an expert surgeon in Washington as to his condition. After examination of Mr. Rose, and to this end, the surgeon-general of the Marine Hospital, Dr. Rupert Blue, was communicated with, and suggested Dr. George Tully Vaughan, 1718 I Street, Washington, D. C., as a qualified expert to make the physical examination of Rose and report thereon. On Jan. 25, 1913, Dr. Vaughan reported as follows:—

I have made two careful and prolonged examinations of Mr. Rose on different days, — the last to-day. In walking, Mr. Rose keeps the toes of the left foot turned in, — otherwise his gait is normal. He is quite able to turn the toes out, but says it gives him pain in the hip, therefore he keeps them turned in. Nothing abnormal could be found in the region where the blow was received last August, except a slight enlargement of one of the superficial veins in each thigh, but a little larger on the left side. The cremasteric reflexes seemed normal, the patellar tendon reflexes were exaggerated but alike on the two sides. He complained of numbness over the greater part of the left thigh, but tests with pin pricks failed to confirm his statement. His chief complaint was of pain and tenderness over the left sacroiliac joint and left hip joint. I could find no evidence of trouble there except tenderness, which could have been caused by the effects of plasters which had just been removed. There was no atrophy or marked weakness of the left thigh and the motions of the hip joint were normal.

*Conclusion.* — Mr. Rose is evidently much run down in health, is nervous, and claims that he has lost 19 pounds in weight since his accident. My examinations failed to bring out any satisfactory evidence of injury

now existing, and it is my opinion that Mr. Rose has recovered from the injuries received last August but does not realize it, and is suffering from the conviction that he is still disabled and that his injuries have produced a permanent disability.

In view of the indefiniteness of the medical reports, the arbitrators requested both parties to attempt to get together and agree as to the extent of disability resulting from the injury, pending which, the arbitration proceedings would be held in abeyance, with the result that on the twenty-first day of April an agreement was arrived at between the Preferred Accident Insurance Company and Harry Rose, the injured employee.

The arbitration committee approves this agreement and finds that said Harry Rose is entitled to thirty-two and one-half weeks disability payments, at one-half of his average weekly wages, from Aug. 8, 1912, to March 24, 1913, or a total of \$325.

EDW. F. MCSWEENEY.  
WILLIAM H. ROSE, M.D.  
PHILIP H. SULLIVAN.

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CASE No. 65.

LEON F. HINDON, *Employee.*

NEW ENGLAND STRUCTURAL COMPANY, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

COMPENSATION REFUSED BY THE INSURER. SERIOUS AND  
WILLFUL MISCONDUCT ON THE PART OF THE EMPLOYEE  
CLAIMED. COMMITTEE FINDS FOR THE EMPLOYEE.

The employee was engaged as an operator on a "buzz planer," and lost the first joint of the little finger of his left hand. It was in evidence that the "buzz planer" had been provided with a guard, but no evidence that the employee had been instructed as to its use. It was also shown that the "guard" had been improved since the injury.

*Held*, that the employee was not guilty of serious and willful misconduct and that he was entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Leon F. Hindon v.

Contractors Mutual Liability Insurance Company, this being case No. 65 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, A. L. Kane of Melrose, for the employee, and Morton C. Tuttle of Boston, for the insurer, heard the parties and their witnesses at the plant of the New England Structural Company in Everett, Mass., on Friday, Jan. 3, 1913, at 10.30 A.M. Amos W. Shepard represented the insurance company and Mr. Hindon was not represented by counsel.

The committee finds that Leon F. Hindon was injured while in the employ of the New England Structural Company, while engaged as a helper on templet work, on the afternoon of Tuesday, Nov. 12, 1912. He was operating a "buzz planer" at the time, his hand slipping and the first joint of the little finger of the left hand being severed. He returned to work November 25, so that the only question at issue was whether or not he was entitled to "medical and hospital" services during the first two weeks after the injury, and to the additional compensation due "for the loss by severance of at least one phalange" of a finger, as provided for in section 11, Part II. of the statute.

It was in evidence that the "buzz planer" had been provided with a guard, but there was no evidence to show that the injured employee had been specifically instructed as to the use of what seems to us to have been a very simple safety appliance, the proper use of which could easily have been mastered. It was also in evidence that the guard previously provided had been improved since the injury to Hindon, and in view of this fact, and the other evidence heard, the committee decides that the injury to the employee arose out of and in the course of his employment, and that he is entitled to medical and hospital services during the first two weeks after the injury and to the sum of \$70.80 for the loss of the first phalange of his finger, as noted.

JOSEPH A. PARKS.  
M. C. TUTTLE.  
A. L. KANE.

CASE No. 66.

WILLIAM CARNILLA, *Employee.*

OCEAN STEAMSHIP COMPANY, *Employer.*

GENERAL ACCIDENT ASSURANCE CORPORATION, LTD., *Insurer.*

RENEWAL OF INCAPACITY FOR WORK. EMPLOYEE ENTITLED  
TO ADDITIONAL COMPENSATION.

The employee, a longshoreman, was paid compensation for a certain period of time, and the insurer then discontinued the payments, claiming that the employee was not incapacitated as a result of his injury. The evidence indicated further incapacity.

*Held*, that the employee was entitled to further compensation on account of incapacity for work as a result of the injury, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Carnilla v. General Accident Assurance Corporation, Ltd., this being case No. 66 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, chairman, Harry B. Ross, Esq., of Boston, and Philip Sullivan of Boston, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Jan. 9, 1913, at 10 A.M.

The committee finds as follows: that the said Carnilla was injured in the course of his employment and arising out thereof Aug. 9, 1912, his employment being that of a longshoreman, his work, when the injury was received, being at 20 Atlantic Avenue, Boston, in the course of unloading freight. Said employee was injured by being struck a hard blow in the body and back of the head by a stick of timber, resulting in internal injuries, as well as some to the head, which caused him to be totally incapacitated. The committee finds that this has continued from the time of receiving the injuries, and still continues. His compensation, as agreed to by the insurer, \$6 per week, was discontinued by said insurer Nov. 1, 1912, and the committee therefore finds that he is entitled to compensation



at the rate of \$6 per week from said Nov. 1, 1912, and during the continuance of said incapacity, with \$4 additional for reasonable medical expenses incurred by him during the first two weeks after receiving said injuries.

DAVID T. DICKINSON.

HARRY B. ROSS.

PHILIP H. SULLIVAN.

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CASE No. 67.

FRANK NICOLOSI, *Employee.*

TYER RUBBER COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK.

The sole question in this case was the duration of the incapacity for work of the employee as a result of the injury. The evidence indicated that further incapacity existed.

*Held*, that the employee was entitled to further compensation, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Frank Nicolosi v. American Mutual Liability Insurance Company, this being case No. 67 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, Daniel J. Murphy of Lawrence, representing the employee, and John W. Duffy of Lawrence, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Lawrence, Massachusetts, on Friday, Jan. 31, 1913, at 10.30 A.M.

It was agreed that the employee was injured on Thursday morning, Aug. 8, 1912, at 11 o'clock, while in the employ of the Tyer Rubber Company and while engaged as a trucker in the heater department of that company in its place of business on North Main Street, Lawrence.

There was a dispute as to the extent of the incapacity for

work resulting from the injury, the insurer contending that incapacity of the employee for work, according to the statement of Dr. C. E. Conroy of Andover, the attending physician, ended on or before Oct. 31, 1912, and the employee claiming that his incapacity still existed. The insurer had offered to close the case by the payment of compensation to October 31 last, and the employee declined to accept any settlement except that of payment of compensation to Jan. 2, 1913. The parties not agreeing, the matter came to be heard in a formal way.

The evidence before the committee discloses as a fact that the employee was incapacitated from Aug. 8, 1912, until Nov. 28, 1912, and is therefore entitled to compensation based upon half his average weekly wages, which were \$9 each week, or the payment of \$4.50 per week, dating from Aug. 22, 1912, to Nov. 28, 1912, or a total of \$63 in all; and that a reasonable fee should be paid for medical services during the first two weeks after the injury; and the committee so finds.

JOSEPH A. PARKS.  
DANIEL J. MURPHY.  
JOHN W. DUFFY.

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CASE No. 68.

EDWARD F. LENEHAN, *Employee*.

WILLIAM BIERWEILER, *Employer*.

UNITED STATES FIDELITY AND GUARANTY COMPANY, *Insurer*.

EMPLOYEE'S CLAIM FOR FURTHER COMPENSATION ON ACCOUNT  
OF CONTINUED INCAPACITY DISMISSED.

The employee claimed that he was entitled to a continuance of compensation on account of incapacity for work as a result of the injury. The evidence indicated that all incapacity as a result of the injury had ceased.

*Held*, that the employee was not entitled to further compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration, further finding that any existing incapacity is due to his age and previous illness.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Edward F. Lenehan

v. United States Fidelity and Guaranty Company, this being case No. 68 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Maurice R. Flynn, representing the employee, and William H. Sullivan, representing the insurer, heard the parties and their witness at the Aldermanic Room, City Hall, Malden, Mass., on Wednesday, Jan. 1, 1913, at 10 A.M.

That on Aug. 28, 1912, Edward F. Lenehan, while employed by William Bierweiler, was injured by falling from a team; that as the result of said injury he received from the United States Fidelity and Guaranty Company the sum of \$32 for medical attendance and disability compensation; that subsequently Lenehan claimed that his disability still continued, and demanded additional compensation, which the said insurance company refused to pay, as a result of which the present arbitrators were appointed, and on the above date and subsequently examined into the case, as is shown in the memorandum of evidence attached hereto.

*Held*, the payment of \$32 by the United States Fidelity and Guaranty Company to the said Lenehan for medical services and disability compensation is full and sufficient payment for the disability resulting from the injury of August 28; that there is no evidence of any present disability due to this injury, and therefore the said Lenehan is not entitled to any further compensation.

EDW. F. MCSWEENEY.

WILLIAM H. SULLIVAN.

MAURICE R. FLYNN.

*Memorandum of Evidence.*

At the appointed hour Mr. McSweeney, representing the Industrial Accident Board; Mr. Parker, representing the United States Fidelity and Guaranty Company; Mr. Lenehan, the injured employee; and Mr. Sullivan, arbitrator for the Insurance Company, were present. After a wait of about thirty minutes Mr. Smith, the arbitrator appointed to represent Mr. Lenehan, not appearing, with the assent of Mr. Lenehan Mr. McSweeney

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., Wednesday, April 16, 1913, at 3 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds, on the statement of counsel, the evidence before the full Board and the report of the committee of arbitration, that John Ira Bentley, the employee, contributed the sum of \$2 a week for the benefit of the minor child, Almira Susan Bentley, and that the said minor child is therefore entitled to a weekly payment of \$1 a week for a period of three hundred weeks from the date of the injury, being a partial dependent under section 6, Part III. of the statute, and in accordance therewith being entitled "to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury."

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWENEY.  
JOSEPH A. PARKS.

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CASE No. 63.

FRED FETTLING, *Employee.*  
A. H. JACQUES, *Employer.*  
ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK.

The insurer refused to pay compensation in this case, claiming that the incapacity for work of the employee as a result of the injury had ceased. The evidence indicated that the employee had been incapacitated, as a matter of fact, for a certain definite period.

*Held*, that the employee was entitled to further compensation in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Fred Fetting v. Ætna Life Insurance Company, this being case No. 63 on the files of the Industrial Accident Board, reports as follows:—

After being duly sworn, the committee of arbitration, consisting of David T. Dickinson, chairman, Thomas H. Mahony, Esq., of Boston, and Paul M. Foss, Esq., of Boston, heard the parties and their witnesses at the hearing room of the Industrial Accident Board, Pemberton Building, Boston, on Wednesday, Jan. 8, 1913, at 10 A.M., and on Thursday, Jan. 16, 1913, at 10 A.M., and reports as follows:—

The question was whether the employee, Fetting, received injuries arising out of and in the course of his employment while employed by the above-named employer, A. H. Jacques, who was insured by the said Ætna Life Insurance Company, under the provisions of the Workmen's Compensation Act.

The weight of the evidence showed and the committee finds that said employee was injured on July 19, 1912, while at work for the said employer as a foreman painter in the building of the Franciscan Convent, Newton. The injuries consisted of a wrench or sprain of the back, also a sprain of the right thumb, from falling down a flight of stairs in said building. He did some slight work following the injury, as foreman, until July 27, but was paid full wages up to that date.

The committee finds that Fetting continued to be totally incapacitated as a result of the injuries up to Sept. 10, 1912. He was incapacitated for a period of two weeks from earning full wages by reason of the injuries on Aug. 10, 1912, although the incapacity continued on from this last date to September 10, as above stated. By reason of said facts, his compensation for total incapacity begins and is reckoned from Aug. 3, 1912, which is the fifteenth day after the receipt of the injuries (July 19).

Since Sept. 10, 1912, said employee has obtained work at intervals at his occupation as painter, and the committee finds that his incapacity for work ceased on that date. He was, therefore, totally incapacitated from work, as a result of the injuries, beginning on August 3, for the period of five weeks and two days.

occupation is contracting; that he worked at this employment about thirty years; that about two or three years ago he gave it up; that he built a house in Wakefield about two years ago and since that time he did a few odd jobs; that during the time he loafed, he was speculating in real estate; that if he had not been injured he would not be doing anything.

Mr. Lenehan further stated that he had two jobs offered to him and he had to refuse them because he was unable to work; that he feels much better than he did; that he thought, when he accepted employment from Bierweiler, he was in shape for work for the rest of the year; that since the accident he has not made any effort to get work. He had rheumatism in the year 1910, from which he was laid up about one and one-half years; in the winter after he had the rheumatism he was able to work; he did not suffer from rheumatism the winter following his recovery. During the attack of rheumatism Dr. Prior and Dr. Plummer treated him; both doctors claimed that it was a kind of nervous breaking of the muscles. That the lumber team from which he fell was about 8 feet high in front, and the back of the team was from 5 to 6 feet from the ground.

Mr. Lenehan promised to submit himself to an examination by a disinterested specialist, and suggested the Massachusetts General Hospital as a proper place to go for such an examination, which was accepted by the arbitration committee, and by Mr. Parker representing the insurance company.

On Jan. 2, 1913, the chairman of the arbitration committee sent a letter to Superintendent Washburn of which the following is a copy: —

JAN. 2, 1913.

Dr. FREDERICK A. WASHBURN, *Superintendent, Massachusetts General Hospital, Boston, Mass.*

DEAR SIR: — I enclose herewith a copy of a letter sent to Edward F. Lenehan of Malden, concerning which I telephoned you this morning. I have asked Mr. Lenehan to show that letter at the front door and ask for you, so that he may be identified.

The case is as follows: on August 28 Lenehan was working for a trucking concern in Malden, and was on top of a wagon of lumber, when he fell or jumped about 7 feet, landing on his feet. He claimed to be injured, went to bed, and after a week or so was about. He subsequently made a settlement with the insurance company, by which he received one-half compensation for four and a half weeks, and was paid for his doctor's bills.

After reaching a settlement he made a further claim for compensation on the ground that he was still suffering from that injury. The matter went to arbitration, and it was shown that he is sixty-three years old, that his occupation is that of a contractor, and that he has not been regularly employed for a period of two and a half or three years. He said that about two and a half years ago he was taken ill with what he thought was rheumatism or nervous trouble, and that he was laid up a long time, probably one year, and since that time he has done no work except speculating in real estate, but that this year he worked for a period on repairing stone walls and other odd jobs, until he received this job in connection with this truckman, and he had been working only an hour or so when he fell from the wagon and received the injury for which he now claims compensation.

The insurance company claims that he is not suffering from this injury, that if there had been any disability resulting from that it has long since ceased, and that the trouble with him is the general breakdown incidental to his old age, and perhaps the result of his sickness two years ago.

As you know, the law says that compensation shall be paid for personal injury sustained by an employee in the course of his employment, and that is the question to be decided in this case. Is Lenehan's present disability, if any disability exists, due to this fall from the lumber wagon or from other causes?

Section 8 says: "The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be five dollars."

This Board is anxious to see that employees receive what is due them, but they are equally anxious that the law designed to compensate workmen for injuries received in the course of their employment shall not be turned into an old-age pension act.

If you will be good enough to send me the report of the doctor after his examination, the Board will be very much obliged to you.

Very truly yours,

EDW. F. MCSWEENEY, I.A.B.,  
*Chairman, Committee of Arbitration.*

Mr. Lenehan was notified to present himself to the Massachusetts General Hospital for examination which he did, and on January 13 a letter was received from Superintendent Washburn of which the following is a copy:—

MASSACHUSETTS GENERAL HOSPITAL, BOSTON, JAN. 13, 1913.

EDW. F. MCSWEENEY, *Industrial Accident Board, 12 Pemberton Sq., Boston.*

DEAR MR. MCSWEENEY:—Edward F. Lenehan has been examined, as you requested, at this hospital by the surgical department, the neurological department and by X-ray. The diagnosis is arteriosclerosis and

hypertrophic spine; no evidence of head injury; no evidence of permanent disability of any kind due to injury.

I am enclosing bill of \$5 due the hospital for this examination. The fees outside for such service by good men would have amounted to about \$50.

Very truly yours,

F. A. WASHBURN,  
*Resident Physician.*

*Finding and Decision of Industrial Accident Board on Review.*

A claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, Feb. 5, 1913, at 11.15 A.M., and affirms and adopts the finding of the committee of arbitration.

The Board further finds that this employee was injured by falling from a wagon while in the employ of William Bierweiler on Aug. 28, 1912, and that his present trouble is due to his age and a previous sickness. At the request of the committee of arbitration the employee was examined at the Massachusetts General Hospital, and Frederick A. Washburn, resident physician, reported as follows: —

Edward F. Lenehan has been examined, as you requested, at this hospital by the surgical department, the neurological department and by X-ray. The diagnosis is arteriosclerosis and hypertrophic spine; no evidence of head injury; no evidence of permanent disability of any kind due to injury.

The Board finds that the payment of \$32 by the United States Fidelity and Guaranty Company to this employee for medical services and compensation on account of incapacity resulting from the injury on Aug. 28, 1912, is full and sufficient payment under the Workmen's Compensation Act for said injury, and that there is no evidence of any present incapacity as a result of this injury, and that the said employee is not entitled to further compensation under the provisions of the statute.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.



CASE No. 69.

ELLEN J. BOOTH, WIDOW OF SAMUEL BOOTH, PETITIONER,  
*Employee.*

J. C. TERRY, *Employer.*

ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

#### EMPLOYEE FALLING OVERBOARD ENTITLED TO COMPENSATION.

The employee, a fireman on a steam lighter, was engaged in operating the steam pump in an endeavor to keep the vessel from becoming water-logged. During the night of the injury he was in sole charge and had been on duty from 12 o'clock noon, and was to have remained on duty until 6 o'clock the next morning. While seeing a fellow employee off the vessel at about 11.30, he stumbled and fell overboard, meeting death by drowning.

*Held*, that this was an injury arising out of and in the course of his employment, and that the widow was entitled to compensation as a total dependent.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Ellen J. Booth v. Ætna Life Insurance Company, this being case No. 69 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, John T. Coughlin, representing the petitioner, and Ignatius X. Cuttle, for the insurer, heard the parties and their witnesses Monday, Dec. 30, 1912, in the Aldermanic Chamber, City Hall, Fall River, at 10 A.M. William H. Clarkson, Esq., represented the claimant and Foster R. Greene, Esq., the respondent.

The committee finds that Samuel Booth was employed by J. C. Terry as a fireman on the steam lighter "Archer," his contract of hire calling for day and night work whenever necessary. At the time of his death, on the night of Sept. 23, 1912, he was engaged in operating the steam pump in an endeavor to keep the lighter from being water-logged. It was the general duty of Booth, as well as of every man on board, according to the evidence of the superintendent, to perform whatever labor or service was necessary, either in the line of his duty as fireman or in the routine work of the lighter. Upon the night of the fatal injury to the deceased, Booth was in sole charge of the vessel and had been on duty since 12 o'clock noon of that

day, and was to have remained on duty continuously until 6 o'clock the next morning. His wages were 22 cents per hour for a nine-hour day, and all work over nine hours was to be counted as overtime and payment made on that basis. It was customary to work overtime.

Ellen J. Booth, his widow, testified that she had carried Booth's supper at 5 o'clock and found him all right.

George Carlson, a fellow employee, came aboard about 7 o'clock, and remained with him until 11.30 o'clock, leaving for home at that time. It was in evidence that Carlson said, "Sam was tending to his water, and as I was leaving said, 'Wait a minute,' and then we both came upstairs together. Just at the deck I stumbled and Sam was close to me. Sometimes they have lines piled on the deck. He grabbed hold of my arm, probably trying to save me, and at the same time I grabbed hold of his arm trying to save myself, and with that we both fell off the boat. He let go of me, and I managed to get hold of a fisherman's punt and saved myself. I don't think he came to the surface again." At the place where the men fell overboard the height of the rail is about 18 inches.

The decision of the committee of arbitration is, therefore, that the injury to Samuel Booth which resulted in his death by drowning arose out of and in the course of his employment, and that his widow, Ellen J. Booth, is entitled to a weekly payment of \$9.25, this being one-half his average weekly wages, for a period of three hundred weeks from the date of the injury.

JOSEPH A. PARKS.

JOHN T. COUGHLIN.

IGNATIUS X. CUTTLE.

CASE No. 70.

ROSE WELCH, *Employee.*

DWIGHT MANUFACTURING COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

INSURER DENIES COMPENSATION, CLAIMING THAT RHEUMATISM  
AND NOT THE INJURY INCAPACITATED THE EMPLOYEE.  
COMMITTEE FINDS THAT INCAPACITY IS DUE TO INJURY.

The employee, who was engaged as a scrub woman, fell upon the oily floor of the factory in which she was employed, spraining her wrist. She continued to work for a few days, and then, owing to the pain in her arm, was obliged to discontinue. There was some question as to whether the incapacity was due to the sprain or rheumatism, which had set in at the point weakened by the sprain.

*Held*, that the employee was entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Rose Welch v. American Mutual Liability Insurance Company, this being case No. 70 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, representing the Industrial Accident Board, chairman, Peter M. Laffeur, representing the employee, Daniel O'Connor, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Chicopee, Mass., on Saturday, Jan. 11, 1913, at 11.30 A.M.

Besides the arbitrators there were present Mrs. Rose Welch, the injured employee, and Dr. C. H. Prendle of 120 Springfield Street, Chicopee, who is the doctor for the American Mutual Liability Insurance Company. Mrs. Welch was not represented by counsel.

The arbitrators find that Rose Welch, the injured employee, while working for the Dwight Manufacturing Company at 3.25 P.M. on Thursday, Oct. 3, 1912, and while engaged in her occupation of scrub woman, fell on an oily floor and sprained her wrist. She continued at work for a few days, and finally was obliged to give up, owing to the pain in her arm which con-

tinues up to this time. She has tried to work since the date of this accident, and has always been obliged to leave her work on account of the arm swelling over night as a result of use.

The injured employee, Mrs. Welch, testified that she was going to try to go to work on Monday and remain at work, regardless of whether there still remained any pain in her arm or not.

Dr. Prendle was sworn, and testified that he saw the woman on the Monday after the accident, which was on the previous Thursday; that he found her arm was sprained. The fall must have twisted the arm out of position and movement of the member was painful. She continued visiting him for a period of a week afterwards, so that all her visits were within one and a half weeks after the injury. He again saw her two and a half weeks after the injury, and believed then that the injury of the sprain should have been cleared up and she ought to have been well in three weeks. Dr. Prendle testified that it was true, considering her age and her occupation, and in view of the fact that her hands were in water continually, that rheumatism, although it had never before manifested itself, might set in and cause pain similar to that occasioned by the sprain. Assuming that rheumatism did set in in the part weakened by the sprain, it might have taken two months to dispose of this rheumatism if she had the treatment necessary, which in this case she has not received.

*Held*, that Rose Welch, the injured employee, while employed by the Dwight Manufacturing Company, received an injury arising out of and in the course of her employment, and was disabled therefrom for a period of twelve weeks; that she is entitled to the two weeks' medical and hospital bills provided in section 5 of the act, and, in addition, to compensation at the minimum rate of \$4 per week, as provided in section 6, for a period of ten weeks, making a total disability payment of \$40.

EDW. F. McSWEENEY.

DANIEL O'CONNOR.

PETER M. LAFLEUR.

CASE No. 71.

JAMES CRABTREE, *Employee.*

MACARTHUR CONCRETE PILE AND FOUNDATION COMPANY,  
*Employer.*

OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *In-*  
*surer.*

CLAIM FOR INCAPACITY FOR WORK ADJUSTED UPON BASIS OF  
EMPLOYEE'S CLAIM BY AGREEMENT.

The employee claimed compensation on account of incapacity for work which, he stated, did not cease until a certain date. The insurer agreed to pay compensation in accordance with this claim.

*Held*, that the employee was entitled to compensation, as agreed.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Crabtree v. Ocean Accident and Guarantee Corporation, Ltd., this being case No. 71 on the files of the Industrial Accident Board, reports as follows:—

After being duly sworn, the committee of arbitration, consisting of Dudley M. Holman, chairman, William A. Driscoll of Lowell and John Louis Sheehan, Esq., of Boston, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Lowell, on Tuesday, Jan. 14, 1913, at 10.30 A.M., and finds that James Crabtree, who was employed by the MacArthur Concrete Pile and Foundation Company, which was insured by the Ocean Accident and Guarantee Corporation, Ltd., on Aug. 8, 1912, at 8.30 o'clock in the forenoon, at the Boston & Maine shops in North Billerica, while guiding timber which was being trolleyed by rope and snatch block, the peavie slipped, and as he threw out his hand into the block, received a bad laceration of the little finger of the left hand.

There was no dispute as to the date and nature of the accident, nor as to the average weekly wage. The claimant stated that disability terminated on Oct. 12, 1912, and the attorney for the insurance company, having agreed to accept this as

correct, the committee awarded Mr. Crabtree \$54.64 compensation, his doctor's bills during the first two weeks having already been paid. He paid one-third the cost of arbitration, \$3.33.

DUDLEY M. HOLMAN.  
JOHN LOUIS SHEEHAN.  
WILLIAM A. DRISCOLL.

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CASE No. 72.

CHARLES McCLELLAND, *Employee*.  
FORE RIVER SHIPBUILDING COMPANY, *Employer*.  
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

INSURER DENIES COMPENSATION BECAUSE OF THE ALLEGED  
SERIOUS AND WILLFUL MISCONDUCT OF THE EMPLOYEE.  
COMMITTEE FINDS THAT CLAIM IS NOT SUSTAINED.

The employee worked as a hand hammerer and calker for a shipbuilding company, and was in danger of injury to his eye by reason of particles or chips of metal flying about. The employers had purchased protecting goggles and posted a small printed notice near the tool clerk's delivery windows, stating that such goggles were available and requiring their use by certain employees. The employee testified that he had never seen or heard of the notice or rule. The rule was not enforced.

*Held*, that there was no serious and willful misconduct on the part of the employee, and that he was entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles McClelland v. Massachusetts Employees Insurance Association, this being case No. 72 on the files of the Industrial Accident Board, reports as follows:—

After being duly sworn, the committee of arbitration, consisting of David T. Dickinson, chairman, Henry Crane of Quincy and Clarence G. Swain of Boston, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board on Tuesday, Jan. 14, 1913, at 10 A.M., and reports as follows:—

The question was whether a certain injury admitted to have been received by said employee in the course of and arising

out of his employment was sustained by reason of his serious and willful misconduct.

The employee worked as a hand hammerer and calker in the employ of the Fore River Shipbuilding Company at Quincy, and another class of employees worked with pneumatic machines on the ships and are called machine as distinguished from hand workers. There was danger to both classes of employees from particles or chips of metal flying and injuring the eyes, but the danger was much greater to the machine than to the hand workers. Prior to April, 1911, there had been no practice among either class of wearing goggles for the protection of the eyes, nor was there any rule requiring their use. If some few employees used them they did so at their own desire and expense. About April, 1911, and since then, the company purchased some protecting goggles and posted a small printed notice near the tool clerk's delivery windows, stating that such goggles were available and requiring their use by both their hand and machine hammerers and calkers, and stating that injuries through their not using them would be at their own risk. A painted notice to the same effect was also put up near by, but the testimony was very conflicting as to whether this was put up before or after Sept. 16, 1912, the date of said employee's injury. A foreman testified that he had also made some effort to bring these printed notices on paper slips to the attention of these workers before and since Sept. 16, 1912, but it appeared that such effort had been practically, if not solely, confined to the machine workers, and that all the hand workers had been permitted to continue to work without using the goggles and to understand that they were not required. In fact, there was some evidence that none of the hand hammerers and calkers had ever been seen to use them, either before or since this accident.

The injured hand worker, who makes this claim for compensation, testified that he had never seen or heard of this notice and rule above mentioned, and the foreman testified that he had no recollection of bringing it to his attention during the six months while he had been in the company's employ, and constantly working without wearing goggles. The employee testified that he had worked at other shipbuilding yards as a

hand hammerer and calker, and there had never been a practice or rule requiring such workers to use goggles, in his experience, and that there was very little and practically no danger from flying particles to the hand workers. It was shown that the danger to the machine workers on account of the flying chips was considerable, and that the goggles purchased for the latter men were largely availed of, either voluntarily or through enforcing the rule since April, 1911. The injury to the claimant, which was caused by a flying particle or chip, totally destroyed the sight of one eye.

The committee finds that there was no serious and willful misconduct by this employee, as the above rule was not enforced against him or the other hand workers, their working without goggles being acquiesced in and permitted in spite of whatever notices or rules were posted. No real attempt was shown ever to have been made to enforce the rule mentioned upon the hand workers, either by threat or discharge, reprimand, or its treatment as a serious offence. If any man had ever been discharged for this reason, or if a breach of this rule had been seriously dealt with in any other way and brought home as such to these hand workers and to this claimant, then this committee would have, without hesitation, believed it its duty under the law, to have held that the breach and defiance of such rule was serious and willful misconduct.

It being admitted that the employee is totally incapacitated for work at present and has been since the injury, and that it resulted therefrom, and that his average weekly wages were \$15 per week, the committee finds that there is due him the sum of \$120, being \$7.50 per week for sixteen weeks from and including Oct. 1, 1912, which was the fifteenth day after the injury, to date, — the same weekly compensation to continue during said total incapacity, but within the limits and subject to the provisions of the Workmen's Compensation Act and its amendments; and in addition thereto the committee finds there is due him, by reason of the total loss of vision of one eye, a weekly compensation of \$7.50 for the period of fifty weeks from the date of the injury, viz., Sept. 16, 1912.

DAVID T. DICKINSON.  
CLARENCE G. SWAIN.  
EMERY CRANE.



CASE No. 73.

EDWARD L. DRISCOLL, *Employee.*

CUSHMAN'S EXPRESS COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DEPENDENT MOTHER OF EMPLOYEE, WHO, FOLLOWING AN EPILEPTIC FIT, FELL FROM HIS WAGON AND SUSTAINED A FRACTURED SKULL FROM WHICH HE DIED, ENTITLED TO COMPENSATION.

The employee, a driver for an express company, suffered from a fainting fit, or an "epileptiform attack," while engaged in his work, falling from the wagon and fracturing his skull. He died before reaching the hospital.

*Held*, that the employee was exposed to a substantial and increased risk owing to his occupation, that the injury arose out of and in the course of his employment, and that the dependent mother was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Edward L. Driscoll v. Employers' Liability Assurance Corporation, Ltd., this being case No. 73 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, of Boston, chairman, Daniel M. Lyons, of Boston, representing the employee, and Owen A. Cunningham, of Boston, representing the insurer, heard the parties upon an agreed statement of facts, signed by Thomas C. O'Brien, Esq., representing the employee, and Henry C. Sawyer, Esq., representing the insurance company, on Tuesday, Jan. 7, 1913, at 10 A.M.

It was agreed by the representative of the dependent of the deceased employee and the representative of the Employers' Liability Assurance Corporation, Insurer, that on Aug. 16, 1912, the said Driscoll was, and has been for some time, previously employed by Cushman's Express Company, earning a weekly wage of \$12; that on said date said express company was insured

in the Employers' Liability Assurance Corporation, Ltd., under the Workmen's Compensation Act; that on said date Driscoll was driving a team in the course of his employment for the said express company on Commonwealth Avenue, near the corner of Pleasant Street, Allston, and had had a fainting fit, described in the report of the medical examiner as an "epileptiform attack," and fell from the wagon, sustaining a fractured skull, was picked up and placed in an ambulance, but died before reaching the hospital. The medical examiner's report of view and autopsy, dated September 20, is hereto attached.

It was further agreed by all the parties to this cause that the said Driscoll was in the habit of paying \$8 a week to his mother, and that she was dependent upon him to that extent.

*Held*, that the deceased employee, Driscoll, was, under the circumstances, exposed to a substantial and increased risk owing to the position in which he had to work, and as a result thereof, sustained an injury arising out of and in the course of his employment, which was followed by his death; that the deceased employee leaves a dependent mother, partly dependent upon his earnings for support at the time of his injury.

The proportion of his weekly earnings contributed during life for the support of his mother amounted to three-fourths of his weekly earnings of \$12, and the said mother, Mrs. Hannah Driscoll, is, therefore, entitled to the payment of \$4 a week for the period of three hundred weeks from the date of injury.

EDW. F. MCSWEENEY.  
DANIEL M. LYONS.

*Inquest.*

Relating to the death of Edward J. Driscoll, No. 2651. Medical Examiner's Report of View and Autopsy, dated Sept. 20, 1912.

THE COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, SS.

CASE No. 2651.

*To the District-Attorney for the Suffolk District.*

You are hereby notified that on the sixteenth day of August, in the year 1912, I received notice that there had been found within said county the dead body of a man whose name is Edward J. Driscoll.

## MEDICAL EXAMINATION.

*History.* — The deceased, who was twenty-three years of age, single, residing at 31 Winship Street, Brighton, employed as a teamster, fell from the team he was driving near the corner of Brighton and Harvard avenues, Aug. 16, 1912, about 5 P.M. He was admitted to the Boston City Hospital in police ambulance of Station 14, where he was pronounced dead Aug. 16, 1912, at 6 P.M. Notification by Boston City Hospital, Aug. 16, 1912, at 6.30 P.M. Medical examination at southern district morgue, Aug. 16, 1912, at 7.10 P.M.

*Witnesses.* — George E. Horle, 4 Nonantum Street, Brighton; Charles P. Woodman, policeman, Station 14; Fred E. Eaton, 176 Broadway, Beverly; Jeremiah Crowley, 68 Fenno Street, Revere.

Body of a man 5 feet, 5 inches, well developed and nourished. Brown curly hair, blue eyes, pupils equal .6 centimeters, face smooth. There is bloody froth from mouth. Cardiac area is small. There is cedema of scalp in right parietal eminence. Body warm, no rigor. Body clothed in white outing shirt, brown overalls, black trousers, white union suit, black stockings and black lace shoes.

## AUTOPSY.

The autopsy was made at 11.20 o'clock in the forenoon of Saturday, the seventeenth day of August, 1912, by authority of the District-Attorney and in the presence of Dr. F. J. Keleher, residing in Boston, and Louis A. Pasco, residing in Boston, witnesses.

*Subcutaneous Fat.* — Measures .6 centimeters.

*Peritoneum.* — Smooth and contains estimated 10 cubic centimeters of a brownish serous fluid.

*Appendix.* — Is 6 centimeters long and lies free, hanging over brim of pelvis. The cæcum is adherent to the lateral abdominal wall. Liver lies 6 centimeters below tip of xiphoid in median line; 1.5 centimeters below rib margin in nipple line. Diaphragm fifth rib right, fifth interspace left. Veins of neck are widely distended with dark fluid blood.

*Pleural Cavity.* — Pleural surface of both lungs show flattened areas of subpleural hemorrhages over backs, notably near root. Right pleura shows adhesions over upper lobe. Left is free and empty.

*Heart.* — Weighs 345 grams. Cavities of right heart are distended with dark fluid blood. Heart muscle is firm, translucent gray-red.

Wall of left ventricle, 1.8 centimeters.

Wall of right ventricle, .3 to .5 centimeters.

Mitral valve, 10.4 centimeters.

Aortic valve, 6.2 centimeters.

Pulmonary valve, 6.4 centimeters.

Tricuspid valve, 13.3 centimeters.

Depth of left ventricle, 6 centimeters.

Valves and cavities apart from dilatation of right cavity are normal.

Coronaries are normal.

*Lungs.* — Are voluminous, heavy, backs bluish-red, fronts gray-red. On section are a dark garnet-red and furnish on pressure abundant blood-stained frothy serum. The lung in lower lobe is markedly friable. Bronchial mucosa is moderately injected, and its surface is covered with blood-stained froth with here and there ecchymoses on the mucosa.

*Liver.* — Weighs 1,980 grams. Organ is firm, brownish-red. On section is translucent. Markings are indistinct. The cut surface is homogeneously colored and shows a somewhat increased density. Gall-bladder contains estimated 30 cubic centimeters of a yellowish brown bile.

*Spleen.* — Weighs 290 grams. Organ is large, firm, with a tense bluish-red opaque capsule. On section cut surface is convex. Lymph nodules are enlarged, varying in diameter up to .15 centimeters. Trabeculae are moderately prominent. Pulp is slightly increased.

*Kidneys.* — Weigh 315 grams. Organ is large, firm. Cortex is a garnet-red measuring from .5 to .7 centimeters, is translucent. Pyramids are a deep bluish-red. Pelvis is smooth and natural. Capsule peels with little difficulty from a smooth surface.

*Adrenals.* — Are small, with a thin irregularly pigmented cortex, a moderate intermediate zone and a full, abundant medulla.

*Stomach.* — Contains four ounces of a thick brownish-yellow fluid, with an aromatic fruity odor. Gastric mucosa is somewhat injected.

*Pancreas.* — Is gray-red, natural.

*Duodenum.* — Contains a brownish-yellow fluid. Its mucosa is somewhat injected.

*Ileum.* — Contains deeply bile-stained semi-solid material. Mucosa is natural. The lymph nodules and Peyer's patches are prominent, but not extremely so.

*Intestines.* — The large intestine contains brownish semi-solid faecal material in considerable quantity. Mucosa is natural.

*Aorta.* — Is thin, smooth and elastic. Tracheal mucosa is moderately injected and covered with a bloody froth.

*Bladder.* — Contains estimated 300 cubic centimeters of a clear straw-colored urine. Mucosa is natural.

*Seminal Vesicles.* — Are moderately distended with a milky fluid.

*Prostate.* — Is normal, cut surface is moist.

*Testicles.* — Are normal.

*Penis.* — Shows no scars.

*Scalp.* — Measures .7 centimeters, is adherent in median line, thickened and cedematous in right parietal region, measuring in places 1.5 centimeters. The right temporal muscle is deeply infiltrated with blood. On its removal there is exposed a linear fracture running from the zygomatic fossa backward and upward to the junction with the parietal eminence. At right angles to this, and 2 centimeters in front of its posterior end, is a linear fracture 1.5 centimeters in length.

*Calvarium.* — Measures .6 centimeters in frontal, .2 centimeters in

temporal region, is light and contains little diploe. There is a free escape of blood from the subdural space on right, the estimated amount of dark fluid blood being 3 ounces.

*Brain.* — The base of brain shows in the left frontal region an area of yellowish-red discoloration with partial disorganization in superficial portion of brain and olfactory lobe and running antero-posteriorly 5 centimeters and laterally from the median line 1.8 centimeters. This has the appearance of being several days or longer old. There is moderate contusion of the basilar portion of the right temporal lobe, running a distance of 1.5 centimeters from the median line and extending backward anterior edge of brain 4 centimeters. There is a yellowish-brown discoloration of the basilar surface of the right cerebellum, measuring 3.8 centimeters antero-posteriorly and 1.5 centimeters laterally. There is a recent dark red contusion of the lateral surface of the left temporal lobe over an area 4.5 by 3 centimeters. There is some thin collection of blood beneath the pia over the whole lateral surface of both temporal lobes.

*Base of Skull.* — The base of skull shows the fracture described running forward crossing the right middle fossa parallel to the petrous portion of the temporal bone and 3 centimeters anteriorly. The fracture terminates in the median line just anterior to the body of the sphenoid, crossing the greater wing in its course. The fracture everywhere is linear.

*Anatomical Diagnosis.* — Fracture of skull, contusion of scalp, subdural hemorrhage, contusions of brain with foci of softening, acute dilatation of right heart, acute passive hyperæmia universal, acute œdema of lungs.

And I further declare it to be my opinion that the said Edward J. Driscoll came to his death as the result of fractured skull and subdural hemorrhage during epileptiform attack.

Dated at Boston, in the county of Suffolk, seventeenth day of August, 1912.

TIMOTHY LEARY,  
*Medical Examiner.*

### *Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, Feb. 18, 1913, at 10.30 A.M., and affirms and adopts the finding of the committee of arbitration.

Henry C. Sawyer, Esq., attorney for the insurer, made the following requests: —

1. The burden of proving that the injury arose out of the employment of the deceased is upon the dependent.

2. The dependent has not satisfied the burden of proving that the injury arose out of the employment of the deceased, and is not entitled to compensation.

3. Upon the agreed facts the said Driscoll's fainting fit was not caused by or brought on by the work in which he was engaged.

4. Upon the agreed facts the said Driscoll's fall was caused by his fainting fit and did not arise out of and in the course of his employment.

5. Upon the agreed facts the deceased, Driscoll, was not exposed to any substantial increased risk by reason of his position upon the wagon, and his injury did not arise out of his employment.

6. Upon the agreed facts the said deceased Driscoll's injury was caused by his fainting fit and did not arise from the work which he was doing or the employment in which he was engaged.

The Board gave the first request and gave the third request with the qualification that the fainting fit did occur while in the course of his employment, and refused the others.

The Board following the case of Wilkes (or Wicks) *v.* Dowell & Company, Limited, 7 Minton-Senhouse, 14, finds the plaintiff is entitled to recover, that the employee was subject to epileptic fits, that while so afflicted and while in the course of his employment he fell from the wagon he was in, and on striking the ground his skull was fractured, the fall causing the fracture of the skull, and from this fracture of the skull he died.

The Board further finds, correcting the error in the report of the committee of arbitration, that the proportion of the weekly earnings contributed by the employee to the support of his mother amounted to two-thirds of his weekly earnings of \$12 and that, therefore, the said mother, Mrs. Hannah Driscoll, is entitled to the payment of \$4 a week for a period of three hundred weeks from the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 76.

JAMES FARRELL, *Employee.*

BLANK BROTHERS, *Employer.*

STANDARD ACCIDENT INSURANCE COMPANY, *Insurer.*

EMPLOYEE DENIED COMPENSATION BY INSURER BECAUSE OF  
INCORRECT INFORMATION GIVEN INVESTIGATOR. GRANTED  
COMPENSATION AFTER DUE HEARING, IN ACCORDANCE WITH  
FACTS AS TO INCAPACITY FOR WORK.

The insurer declined to pay compensation in this case because of the report of an investigator, who had been incorrectly informed as to the facts, a young man in the next house, who was not on friendly terms with the employee, informing him that during the time he was alleged to be incapacitated for work he had seen him playing baseball and washing windows. At the hearing, however, he was not certain as to dates. Playmates of the employee stated that he was in the habit of playing baseball and going swimming, but had not enjoyed these pleasures during the period for which he claimed compensation. Medical evidence corroborated the employee's claim.

*Held*, that the employee was entitled to compensation during incapacity, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Farrell v. Standard Accident Insurance Company, this being case No. 76 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, representing the Industrial Accident Board, Edward W. Foye of Boston, representing the employee, and Thurston L. Smith of Boston, representing the insurer, heard the parties and their witnesses Thursday, Jan. 30, 1913, at 10.30 A.M. in the City Council Chamber, City Hall, Everett, Mass.

The parties agreed that James Farrell was injured on July 17, 1912, by slipping out of a chair and striking his elbow while in the act of stopping a machine, sustaining an injury to the elbow. With reference to his incapacity for work it was claimed that he had at various times after the injury been engaged in washing windows, playing baseball, chopping wood and swimming. On the other hand, the employee maintained

that all of these acts were performed prior to the time of his injury. It was also claimed that the witnesses for the insurer might have mistaken the brother of the employee, of about the same build, for the employee himself.

Augustus Gay, the principal witness for the insurer, stated that he had seen the injured employee playing baseball and washing windows. He was not quite certain as to dates, however, and admitted that his family and the family of the employee were not on good terms.

Peter J. Conroy, M.D., who attended the injured employee, stated that the cut was near what is known as the "crazy bone" and would have caused pain with every movement. He was uncertain whether work could be performed or not.

Martin Higginbottom and Isaac S. Shillady, two comrades of the employee, testified that they often played games and went in swimming with him, but that they had not done any of these things since the accident.

The committee finds that James Farrell, the employee, was injured in the course of his employment, and that he was totally incapacitated from work from July 17, 1912, to Sept. 3, 1912, and that he is entitled to reasonable medical and hospital services from July 17 to July 30, 1912, inclusive, and to the minimum rate of \$4 per week under the statute from July 31 to September 2, inclusive, or four and six-sevenths weeks at \$4, a total of \$19.43 being due for incapacity, resulting from the injury.

JOSEPH A. PARKS.  
THURSTON L. SMITH.  
EDWARD W. FOYE.



CASE No. 80.

CHARLES H. GILBERT, *Employee.*

E. A. ABBOTT, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
*Insurer.*

EMPLOYEE RECEIVING INJURIES WHILE BEING TRANSPORTED  
TO HIS PLACE OF EMPLOYMENT ENTITLED TO COMPENSA-  
TION. IMPLIED CONTRACT TO TRANSPORT EMPLOYEE TO  
AND FROM HIS PLACE OF EMPLOYMENT EXISTED.

The employee was engaged as a carpenter and stated that, when his contract of employment was made, it was understood that he would be taken in an automobile hired by his employer, without expense on his part, to the place of employment, and that, as a matter of fact, this automobile did take him and other employees to and from the place of employment daily. The employer agreed that this understanding as to transportation existed.

*Held*, that this was an injury arising out of and in the course of the employment.  
Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

#### *Report of Committee of Arbitration.*

The committee of arbitration appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles H. Gilbert v. Employers' Liability Assurance Corporation, Limited, this being case No. 80 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, John Dailly of Dorchester, representing the employee, and W. H. Hitchcock of Boston, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Wednesday, Jan. 29, 1913, at 10 A.M.

It was agreed that the injury occurred on Sept. 24, 1912, said injury occurring while the employee was being transported in an automobile truck furnished by E. A. Abbott, his employer, to the place of employment. The employee was precipitated to the ground by the breaking of an axle, his leg being caught underneath the truck. He sustained a cut ex-

tending from the ankle to the knee, and in addition a piece of flesh was gouged out.

The insurer contended that, since the injury occurred before working hours, the employee was not entitled to compensation, said injury not arising out of and in the course of his employment.

Gilbert testified that, when his contract of employment was made, it was understood that he would be taken in an auto hired by Mr. Abbott, without expense, to the place of employment, and that this truck took the men from the village every morning to the place where the work was to be done, returning with them at night. He would not have undertaken the work under any other conditions, and stated, further, that it would have been difficult to find men to accept employment unless transportation had been furnished. Special seats for employees were provided on this truck.

August Johnson, 12 Nelson Street, West Lynn, a fellow employee, corroborated Gilbert, and testified that the truck was engaged for the convenience of the men and for use in connection with the job.

George Beasley, another fellow employee, of Westland Avenue, East Saugus, testified that he understood, when he was engaged, that there would be a conveyance provided to carry the men back and forth, and he had accepted employment on that condition.

Thomas Yates, a third fellow employee, stated that he "thought himself as being employed when riding on the truck, on account of the agreement to carry the men. He would not have taken the job if this convenience had not been provided."

Mr. Abbott, the employer, said that he had informed the men that they would be permitted to ride from the boarding house to the job, it being the custom of the chauffeur to stop every morning and sound his horn as a warning to the men that he was about to proceed to the scene of operations. It was also customary to take the men back to their boarding house at night. The automobile carried building material to the job during the day.

Following the English cases, it appears to be a well settled principle that employees who are injured while being carried

to or from work are entitled to compensation, such injuries arising out of and in the course of employment.

In the case of *Holmes v. Great Northern Railway*, 2 M.-S. 19, the employee was carried from King's Cross to Hornsey every morning and back every night. While on the way from Hornsey Station to the shed he was killed. *Held*, that the man's employment commenced at King's Cross and that the accident arose out of and in the course of his employment. In the case of *Cremins v. Guest, Keen & Nettlefolds, Lim.*, 1 B. 160, the employee was given free transportation from his home to the colliery and return. While waiting for the train the employee was knocked down in a rush for seats and was killed by the train. *Held*, that it was an implied term of the contract of service that the trains should be provided by the employers, and that the colliers should have the right, if not the obligation, to travel to and fro without charge; and that therefore the employment began when the colliers entered the train in the morning and ceased when they left the train in the evening, and the employers were liable. In the case of *Pomfret v. Lancashire & Yorkshire Railway*, 5 M.-S. 22, it was the duty of the employee to book off at Newton Heath every evening, and he had the right when he had finished his day's work to travel by any train going to Newton Heath from the place where he had left his engine. While so traveling he was fatally injured by a fall from the railway carriage. *Held*, that this was an injury which arose out of and in the course of his employment.

The fact that Gilbert understood that he was to be provided with free transportation to and from his place of employment, corroboration of this implied contract by fellow employees, and the fact that Abbott, the employer, agreed that this understanding existed, and that the automobile truck called at the boarding place each morning, sounding a warning to the employees that the journey was about to be made, and thereafter taking said employees to the job, returning with them in the evening, impels the committee of arbitration to find as a fact that this carrying of employees to and from work was a part of the contract of hire, and therefore that while said employees were being so carried they were in the course of their employ-

ment, and an injury sustained while being so carried could fairly be said to arise out of and in the course of employment.

Under all the circumstances, and in view of the fact that the statute is remedial and intended to be construed broadly and liberally, as well as in view of the further fact that the English decisions are favorable to this point of view, the committee of arbitration finds that the injury to Gilbert, the said employee, arose out of and in the course of his employment, and that he is entitled to hospital and medical services and medicines from Sept. 24 to Oct. 7, 1912, inclusive, the first two weeks after the injury, and to compensation, beginning Oct. 8, 1912, the fifteenth day after the injury, and continuing during his total incapacity for work, based upon his average weekly wage, or the payment of a weekly compensation of \$10 during said total incapacity for work.

JOSEPH A. PARKS.

JOHN DAILLY.

*Dissenting Report.*

I am unable to agree with the report of the majority of the committee. Upon principle and under the English cases, as I understand them, the right to compensation in a case of this sort depends upon the existence of an actual contract, either expressed or implied, in fact, on the part of the employer to transport an employee to his place of work. In the absence of such a contract, it cannot be said that an injury received by an employee while on his way to work arises out of and is received during the course of his employment. That employment cannot begin so long as no obligation of any sort connected with it is in force. If the employer, as a matter of courtesy and entirely without obligation, is transporting his employees to the scene of their labors, his act is in no way connected with the employment. It is no more than if the act of courtesy had been performed by some third person.

In my opinion no evidence was introduced before the committee warranting a finding of any contract between Gilbert and his employer for such transportation. Of course what Gilbert or his fellow employees understood is entirely immaterial. There can be no contract without the actual assent of both parties to its terms.

Gilbert was employed by Abbott in Boston to go to Barre to work there as a brick mason at some distance from the main village. It was expressly agreed that his railroad fare to Barre and back to Boston at the end of the job should be paid by Abbott. The latter also said to Gilbert that he could get board near the job, but if he chose to board in the village there was an auto truck employed by Abbott which went from the village to the work every morning, and that the men had the privilege of riding upon it. At first Gilbert boarded near the job and had no occasion to use the truck. Later he changed to a boarding house about half way from the village to the job. Thereafter he got upon the truck as it came along each morning and rode up with some of the other men upon it. He also generally rode back upon it at night. If the truck was out of repair, or for any other reason did not run either in the morning or at night, the men walked. This happened on several occasions, but no additional compensation was paid the men on that account. The witnesses all testified that their pay did not begin until they reached the job and began work, and that their time stopped when they left the job.

This truck was not owned by Abbott, but was hired by him of a man whose garage was in the village. It was paid for by the hour from the time when it left the garage. If there was no work for it to do the whole day it left Abbott's service and did not wait to carry back the men at night. Only a portion of the men used it, as many boarded near the job.

Plainly upon all the evidence the permission given Gilbert and the other men to ride upon the truck was a mere gratuity. The truck was coming up to the work in any event, and Abbott permitted his men to ride upon it as a matter of courtesy. There was no contract obligation upon Abbott to transport these men to the job. They clearly could have maintained no action against him because of any of the occasions when the truck did not carry them.

I am of opinion that Gilbert's injuries were not received out of and in the course of his employment, and that he is entitled to no compensation.

WILLIAM HAROLD HITCHCOCK.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, March 18, 1913, at 10.30 A.M., and affirms and adopts the findings of the committee of arbitration.

Counsel for the insurer made the following requests for rulings: —

1. Upon all the evidence the Board must find that said Gilbert's injury did not arise out of and in the course of his employment and he is not entitled to compensation.

2. Upon all the evidence the Board must find that there was no contract which obligated the employer to transport said Gilbert to and from his work.

3. If the Board finds that the employer had not made a contract with said Gilbert which obliged him to transport said employee from his boarding house to the job, and the injuries were received while said Gilbert was being so transported, the finding must be for the insurer.

4. If the Board finds that permission was given said employee to use the automobile in going to and from work when said automobile was being operated, but that there was no obligation on the part of said employer to operate said automobile, the finding must be for the insurer.

5. If the Board finds that the use by said Gilbert of the automobile was a mere gratuity, and that the permission to Gilbert to ride upon the automobile was a matter of courtesy on the part of the employer, the finding must be for the insurer.

6. If the relation which existed between said employee and employer was such that no right accrued to the employee in case of failure or neglect on the part of said employer to provide said automobile to transport the employee to his work, the finding must be for the insurer.

7. Upon all the evidence the Board must find that there was no contract between said employee and employer for transportation of said employee to and from his work by his employer.

8. If the Board finds that the employee's method of traveling was not controlled by the employer, and finds that the employee was a free agent, then the Board must find that the relation of employee and employer did not exist at the time and the finding must be for the insurer.

9. If the Board finds that the employee was under no obligation to use said automobile, but that it was optional with said employee as to whether or not he would use said automobile, then the finding must be for the insurer.

10. If the Board finds that the employee might reach his place of work in any manner he liked, then he is not entitled to compensation.

11. The burden is upon the applicant to show that the accident arose out of and in the course of his employment.

The Board finds that the contract for transportation was made, and refuses all the requests, except that numbered 11, which is given.

The Board further finds, following the English cases referred to in the report of the committee of arbitration, that it was an implied term of the contract of service that Charles H. Gilbert, employee, was to be provided with free transportation to and from his place of employment, and that while the said employee was being so carried he was in the course of his employment and that the injury sustained while being so carried arose out of and in the course of his employment.

The Board further finds that the said employee is entitled to reimbursement for the money expended for hospital and medical services and medicines from Sept. 24 to Oct. 7, 1912, inclusive, the first two weeks after the injury, amounting to \$25, and to compensation beginning Oct. 8, 1912, the fifteenth day after the injury, continuing during his total incapacity for work, based upon his average weekly wage of \$26.40, that is, to the payment of the maximum weekly compensation of \$10 a week during said total incapacity.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 81.

JOHN NELSON, *Employee.*

BAY STATE DREDGING COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE  
EMPLOYEE CLAIMED BY INSURER. CLAIM DISMISSED. EM-  
PLOYEE AWARDED COMPENSATION.

The employee, an unlettered Swede, applies for compensation which is denied by the insurer on the ground that the injury resulted from a fight and not from his employment. The evidence at the formal hearing was entirely against the employee, but all the parties, impressed with the evident sincerity of the claimant, agreed that the fellow employees named by him should be interviewed. The insurer arranged for the transportation of the committee and parties, and after a trip down the harbor, during the course of which many dredgers were visited and employees interviewed, it was shown that the fight was a trivial affair occurring several days before the injury and that the injury was received by the employee, as claimed.

*Held*, that the employee was not injured by reason of his own serious and willful misconduct, and was entitled to compensation.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Nelson v. Employers' Liability Assurance Corporation, Ltd., this being case No. 81 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, William H. Sullivan of Boston, representing the employee, and W. Lloyd Allen of Boston, representing the insurer, heard the parties and their witnesses on Thursday, Jan. 16, 1913. The committee held two sessions, one at 10 A.M. in the Hearing Room of the Board in the Pemberton Building, and the other in the afternoon, part of the afternoon session being taken up by a trip on the tug "Blue Jay" interviewing witnesses which the employee could not afford to summons. The committee finally interviewed the Marine Hospital physician towards the close of the afternoon.

The committee adopted this unusual procedure because of the conflicting claims of the employee and the insurance com-



pany, both apparently being made in good faith, and all the parties agreeing that the truth should be ascertained and the verdict based upon the facts testified to. The morning hearing seemed to indicate that the claim of the employee was without foundation, and had the case been closed at that time the committee would have been obliged to decide against him.

The insurance company claimed that Nelson had a fight with another employee on Oct. 19, 1912, and if any injury was sustained it was the result of this fight and did not arise out of and in the course of his employment. Mr. Nelson claimed that the fight happened on Oct. 17, 1912, and that he had not been incapacitated as a result of this personal encounter with the mate of the dredger. He claimed that the injury happened on Oct. 19, 1912, and that only his lack of means prevented him from obtaining the attendance of the necessary witnesses to prove his claim.

Mr. Nelson testified that the injury occurred on Oct. 19, 1912, while he was performing his usual work of pulling off the damaged rubber from the seams in the bottom of the dredger. He was straddling the seam when the connecting chain gave way, and he was precipitated to the bottom of the scow, sustaining a rupture in the side. He finished his work that afternoon, knowing that the doctor could not be found in his office after 4 o'clock. The accident occurred about 3 o'clock, and no one witnessed it.

He said the fight occurred on Thursday and was not a serious one, neither he nor the mate being injured. He worked Thursday, Friday and Saturday. Many had seen the fight, but no one had seen the accident. Three witnesses, Mr. Hatch, manager of the dredging company, Captain Gatchell of the tug "Blue Jay," and superintendent Whitney of the dredging company, all testified that they had knowledge of the fight, but no knowledge of any accident.

The insurance company's attorney arranged with the employer to secure the services of a tug, and the committee of arbitration interviewed various witnesses at their places of employment. John Thompson remembered that a fight had occurred, but was positive that it did not happen on the 19th. Captain George Nelson of the "Undine" witnessed the fight,

and was also positive that it did not occur on the 19th. Richard Butler, engineer of the "Undine," testified that no injury resulted to Nelson from the quarrel. Eugene Green, captain of the dredger, was positive that the fight did not occur on the 19th. Dr. F. H. Cleaves, the Marine Hospital physician, who attended Nelson, after hearing him describe the injury, said that it could undoubtedly have occurred in the manner described. Mr. Nelson's description of the injury to Dr. Cleaves tallied exactly with that given in this testimony at the morning session of the committee.

The committee finds that the injury to Nelson was sustained, as claimed by him, on Oct. 19, 1912, and that it arose out of and in the course of his employment as head scow man for the Bay State Dredging Company, on a scow in Mill River, Gloucester, Mass. The decision of the committee is that Nelson is entitled to medical and hospital services and medicines during the first two weeks after the injury, and to compensation based on half his average weekly wages of \$13, beginning on November 2, the fifteenth day after the injury, and ending on December 8, the day upon which it was agreed his incapacity for work ceased.

JOSEPH A. PARKS.  
WILLIAM H. SULLIVAN.  
W. LLOYD ALLEN.

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CASE No. 82.

BERTHA B. WOODMAN, *Employee*.  
GORDON COAT AND APRON SUPPLY COMPANY, *Employer*.  
TRAVELERS INSURANCE COMPANY, *Insurer*.

EMPLOYEE INJURED WHILE ENGAGED IN OTHER THAN HER  
USUAL OCCUPATION. INSTRUCTED TO OPERATE A MA-  
CHINE BY A FOREWOMAN IN ABSENCE OF MANAGER.  
ENTITLED TO COMPENSATION.

The employee was regularly employed in counting out and tying up barber towels in a laundry, and during the absence of the manager, a person recognized as having authority as a forewoman requested her to work at one of the ironing machines. Compensation was declined on the ground that the injury did

not arise out of and in the course of her employment, the operation of the ironing machine not being the work which the employee was hired to perform. Held, that the injury arose out of and in the course of the employment, the working having been directed under the authority which the forewoman possessed.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Bertha B. Woodman v. Travelers Insurance Company, this being case No. 82 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, chairman, John W. Converse of Boston and Harold P. Williams of Boston, after being duly sworn, heard the parties and their witnesses on Friday, Jan. 10, 1913, at 10 A.M., at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, and reports as follows:—

The committee finds that Bertha B. Woodman was in the employ of the Gordon Coat and Apron Supply Company, a laundry, in Boston, on Oct. 28, 1912, and had been so employed since the last of September. Her regular employment during this time had been counting and tying up barber towels.

A woman, named Grace Melanphy, had certain authority as forewoman, to direct and keep the girls at work in the room in which Miss Woodman was employed, among whom were several girls at work at the ironing machines. The forewoman, in the course of her duties, also instructed girls how to run such machines. When the general manager was absent from the room, Miss Melanphy was the principal forewoman in authority over the towel counters and the ironing workers, and kept them supplied with the articles on which they should work, and attended to the proper dispatch of such work. As Miss Melanphy testified at the hearing, without contradiction by the manager who was present, when he was away from the room she had charge, and the girls came to her and asked her what to do, and if they did not do what she wanted them to do she would report to Mr. Watts.

On October 28 Miss Melanphy requested Miss Woodman to work at one of the ironing machines which had been idle on account of the absence of a regular employee for two or three

days. Miss Woodman had, previous to her present employment, worked at a mangle, so called, somewhat similar in its operation to the ironing machines, and this fact was known to Miss Melanphy at the time she requested Miss Woodman to work on the ironing machine.

Before Miss Woodman commenced work at the machine Miss Melanphy gave her some instructions and directions regarding its use. The evidence showed that Miss Melanphy was seen standing beside Miss Woodman while the latter was working at the ironing machine or holding the article which she was about to iron with said machine. While being thus at work on said October 28, Miss Woodman's left hand was caught between the rollers of the machine and injured by being burned and somewhat crushed.

The committee finds that said injuries received by her arose out of and in the course of her employment, said work having been directed under the authority which the forewoman, Miss Melanphy, possessed, and which authority was apparent and held out by the manager to the operatives in said room; that Miss Woodman has been totally incapacitated since receiving the injury, as a result thereof, and still continues to be; that her average weekly wages were \$6; and that she is entitled to receive from the insurer during the continuance of said incapacity a compensation of \$4 per week, dating from and beginning with Nov. 12, 1912, the said employee having been incapacitated from earning full wages on Oct. 28, 1912.

DAVID T. DICKINSON.  
JOHN W. CONVERSE.

I dissent from the above finding.

HAROLD P. WILLIAMS.

CASE No. 83.

BARNEY GILLEN, *Employee*.

CANADA, ATLANTIC & PLANT STEAMSHIP COMPANY, *Employer*.  
OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *Insurer*.

LONGSHOREMAN ENTITLED TO COMPENSATION BASED UPON THE  
WAGES EARNED BY HIM WHILE WORKING AS A LONGSHORE-  
MAN FOR DIFFERENT EMPLOYERS DURING THE COURSE  
OF A GIVEN PERIOD OF TIME.

The employee was a longshoreman who received an injury while working for a steamship company, and it was admitted that his average weekly wages during the course of a year from that company were \$8. The evidence showed, however, that the employee worked for many different employers as a longshoreman in the course of a day or a number of days or a year, and that his average weekly wages while employed as a longshoreman were \$13.

*Held*, that the employee was entitled to compensation based upon the average weekly wages earned while working for all employers as a longshoreman in the course of a given period.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Decision*. — The Supreme Judicial Court affirms the findings of the Industrial Accident Board.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Barney Gillen v. Ocean Accident and Guarantee Corporation, Ltd., this being case No. 83 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll of Springfield, chairman, Vincent C. Hoye of Boston, representing the insurer, and George R. Neale of Malden, representing the employee, heard the parties and their witnesses on Wednesday, Jan. 8, 1913, at 2 P.M., and finds that Gillen was a longshoreman employed by the Canada, Atlantic & Plant Steamship Company, insured under the provisions of the Workmen's Compensation Act with the Ocean Accident and Guarantee Corporation, Ltd., and that said Gillen was

injured in the course of his employment and sustained a fracture of the leg Sept. 7, 1912.

The steamship company operates its line between Boston and Halifax, one boat arriving and leaving each week in winter, and two boats in summer. The amount of freight is about the same throughout the year, and the employees of the line in the same grade, employed at the same work, work on an average of fifteen to twenty hours weekly, receiving 30 cents an hour. No longshoreman, employed temporarily or regularly by the Plant line, receives more than \$8 per week. Gillen, when he worked for the said line, received less than \$8 weekly. He, however, worked for other steamship companies, as longshoreman, and earned from all such sources \$13.50 per week, and this was the average earned by persons in the same grade, employed in the same class of employment, and in the same district. The committee finds that the facts material to the issue are as above stated.

The Ocean Accident and Guarantee Corporation, Ltd., contend that, as the said Gillen was not a regular employee, and because of the nature and terms of the employment, the average weekly wages must be computed with regard to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer, and as they claim that this amount is less than \$8 per week, contend that said Gillen should receive \$4 per week.

The committee rules that the said Gillen shall be paid \$6.75 per week during his incapacity, beginning Sept. 21, 1912, and that by reason of the nature and terms of the employment it is impracticable to compute the average weekly wages as claimed by the insurance company, that is to say, upon a basis of what he actually earned with this employer, and rules that the average weekly wages of \$13.50 is the average earned by persons in the same grade employed in the same class of employment and along shore in the city of Boston.

JAMES B. CARROLL.  
VINCENT C. HOYE.  
GEORGE R. NEALE.

*Findings and Decision of Industrial Accident Board on Review.*

A claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, Jan. 21, 1913, at 3.30 P.M., and it finds that the average weekly wage earned by the employee and by persons in the same grade, employed in the same class of employment in the city of Boston, is \$13 instead of \$13.50 per week, and that the employee is therefore entitled to a weekly payment of \$6.50 each week during his total incapacity for work, these weekly payments to date from Sept. 21, 1912, which is the fifteenth day after the injury; and in all other respects affirms the findings of the committee on arbitration.

The Board finds that this employee performed work for many employers during the course of a day or several days and in the course of a year, working at his occupation of longshoreman, and, in accordance with the custom of other longshoremen being in the service of different employers, earned an average weekly wage of \$13.

The Board further finds that longshoremen work steadily for many employers, and that the average weekly wages earned by persons in the same grade employed in the same class of employment and in the same district are \$13 each week.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

*Decree of Supreme Judicial Court on Appeal.*

RUGG, C.J. This is an appeal under the Workmen's Compensation Act, St. 1911, c. 751. The employee, a longshoreman, was injured in the course of his employment by the Canada, Atlantic & Plant Steamship Company, which was insured under the act with the insurer. The facts are that the steamship company operates a line between Boston and Halifax, one boat in winter and two boats in summer, arriving at

and leaving Boston each week. The longshoremen in its employ work on an average for fifteen to twenty hours weekly, and receive for it not more than \$8 a week. The employee, like other longshoremen, worked for other employers during a day or group of days, and earned by the year by his services an average weekly wage of \$13, which was the average weekly wage earned by other longshoremen in the same class of employment in the same district. The insurer contends that the employee was not a regular employee of the steamship company, and that his average weekly wages must be the average amount per week which during the twelve months previous to the injury was being earned by a person in the same grade, employed at the same work by the same employer. If this contention is sound, the employee would be entitled to \$4 per week. The employee contends, however, that, inasmuch as he worked continuously at his occupation as longshoreman for different employers, according to the custom of his craft, he is entitled to receive \$6.50, being one-half his average weekly earnings as longshoreman from all sources.

The decision depends upon the meaning of "average weekly wages," and the method of their ascertainment as set out in Part V., section 2, of the act. "Average weekly wages" are there defined to mean "earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period, then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted." It is apparent, both from its phrase and its context, that this sentence applies to a continuous employment throughout the year. While the language is not amplified, it refers to substantially uninterrupted work in a particular employment from which the wages of the employee are derived. The basis is the earning capacity of the workman as shown by such employment. The next clause of the section is, "Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above de-



finer, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer." This clause provides a method for the determination of average weekly wages where the employee, for the reasons stated, has not been in the service for a year, by reference to the wages of others whose employment is substantially continuous. It affords a guide by which to estimate the compensation to be paid to the employee where there are those in the service of the same employer continuously employed in the same grade at the same kind of work. It is apparent that this clause does not cover the employee's case, because there is no substantially continuous employment of longshoremen by this steamship company during the year. It is obvious from the broad scope of the act, and its comprehensive dealing with the whole subject, that it was intended to provide for the employee as compensation within the limits specified therein a definite proportion of the amount which he earned weekly. It cannot be presumed that the Legislature intended to offer a scheme of accident insurance which would be illusory or barren to large numbers of workmen. "Weekly wages" as used in the first sentence quoted above plainly means all the wages which the employee receives in the course of a permanent employment, which are all the wages he receives. Where words are used in one part of a statute in a definite sense it may be presumed, in the absence of a plain intent to the contrary, that they are used in the same sense in other places in the same act. Therefore we reach the conclusion that average weekly wages as used in the clause of the act last quoted was not intended to apply to recurrent periods of brief service at regular intervals, in cases where the entire time of the workmen is devoted to like employment for other employers in the same general kind of business. The final clause of the paragraph defining average weekly wages is as follows: "or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district." This clause affords reference to a general average of like employment in the neighborhood as a standard to be considered. It does not restrict consideration of the matter

to the same employer. It applies to a case like the present, where the custom of the employment is for continuous work of a specified kind for different employers.

While the language of the definition is not so clear as might be desired, it seems to us to be intended to include in abridged form parts of (1) (b) and (2) (a) and (b) of the first schedule of the English Workmen's Compensation Act, 6 Edw. VII. (1906), c. 58. It is true that (2) (b) of the English schedule covers a case like the present in express language. But the English act is more minute in many of its provisions, and our act resembles the present English act far more closely than it does the earlier one of St. 60 & 61 Vict., c. 37. Although not stated in precise words, we think that the general import of the act is to base the remuneration to be paid upon the normal return received by workmen for the grade of work in which the particular workman may be classified. This is the case where it is "impracticable" to reach a result which shall be fair to the workman to the extent intended by the act of giving him compensation for average weekly earnings in any other way than by following the course pointed out in the final clause of the definition. (See *Ferry v. Wright* (1908), 1 K. B. 441; *Anslow v. Cannock, Chase Colliery Co.* (1909), 1 K. B. 352; S. C. (1909), A. C. 435.)

This is not a case where the usual employment of the employee is only two or three days in the week, as pointed out in *White v. Wiseman* (1912), 3 K. B. 352, 359, but a case where the condition of the workman is continuous labor in regular employment with different employers. The loss of his capacity to earn, as demonstrated by his conduct in such regular employment, is the basis upon which his compensation should be based.

*Decree affirmed.*

CASE No. 85.

DANIEL F. MCINTYRE, *Employee.*

BENJAMIN FOX, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY FOR WORK. OVERPAYMENT FOR INCAPACITY ON ACCOUNT OF ONE INJURY TO BE CREDITED TO INSURER AS A PAYMENT ON ACCOUNT OF INCAPACITY RESULTING FROM A SECOND INJURY. TWO CASES HEARD AS ONE.

The employee received an injury arising out of and in the course of his employment while working for two different employers, being overpaid on account of incapacity resulting in one case and underpaid in the other.

*Held*, that the employee was entitled to compensation during incapacity, in accordance with the evidence, the overpayment in one case to be credited towards making up the underpayment in the other.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Daniel F. McIntyre v. Employers' Liability Assurance Corporation, Ltd., this being case No. 85 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, chairman, Owen A. Cunningham of Boston and Willard E. Lane of Cambridge, being duly sworn, after hearing the evidence of the parties at the Hearing Room of the Industrial Accident Board, on Monday, Jan. 13, 1913, at 2 P.M., finds that the said Daniel McIntyre received injuries arising out of and in the course of his employment as carpenter on Aug. 21, 1912; that said injuries were received in connection with his employer's work as building contractor by his left wrist being caught on the projecting point of a spike, which punctured the flesh.

Compensation, on account of said injury, was paid by agreement between said insurer and employee at the rate of \$10 per week, dating from Sept. 4, 1912, and by reason of an injury totally incapacitating said employee on Sept. 16, 1912,

received while said employee was working for the Hugh Nawn Contracting Company, compensation to the amount of \$30 was paid to said employee in excess of what he was entitled to as a result of the injury received by him in the employ of the said Fox Company, Incorporated, said \$30 having been paid to him by said insurer through a mistake of fact, in supposing that the incapacity for which he was paid said \$30 arose out of the injury first received. Both said Fox company and the Nawn contracting company had insured under the Workmen's Compensation Act with said insurer.

The committee finds that there is due from said employee to said insurer, in order to correct said mistake in overpayment, the sum of \$30, the report and findings of the committee in the case of said employee arising out of the injury received from the Nawn contracting company to be filed simultaneously with this report, and the mutual accounts and indebtedness of said employee and insurer to be then balanced and adjusted.

DAVID T. DICKINSON.

WILLARD E. LANE.

OWEN A. CUNNINGHAM.

Case No. 74, Daniel F. McIntyre *v.* Hugh Nawn Contracting Company, which was heard at the same time, was closed by agreement, the Employers' Liability Assurance Corporation, Ltd., paying the employee fifteen weeks' compensation at \$10 per week dating from Sept. 30, 1912, the fifteenth day after the injury, and taking a settlement receipt therefor, this settlement being approved by the Board.

CASE No. 86.

THOMAS I. WORDEN, *Employee.*

J. B. SMITH, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

IMPARTIAL EXAMINATION INDICATES THAT PRESENT INCAPACITY  
FOR WORK IS NOT DUE TO INJURY. DUE TO RHEUMATISM.  
NOT ENTITLED TO FURTHER COMPENSATION.

The employee requested arbitration, claiming that his present incapacity for work was due to the injury received while employed as a teamster. The insurer claimed that his incapacity for work was due, not to the injury, but to rheumatism, and an impartial examination by the physicians of the Massachusetts General Hospital indicated that the "present symptoms are not due to the accident which occurred on Oct. 8, 1912."

*Held*, that the employee was not entitled to further compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas I. Worden v. Employers' Liability Assurance Corporation, Ltd., this being case No. 86 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, John G. Brackett, representing the insurer, and E. A. Sanborn, M.D., representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Thursday, March 13, 1913, at 10 A.M.

Thomas I. Worden was employed by J. B. Smith, 133 Blackstone Street, Boston, as a teamster. On Tuesday, Oct. 8, 1912, at 10 A.M., while in the course of his employment, he was on the top of a lot of cases in the freight house, when they fell over and threw him, and the cases struck him in the back and side, injuring his head, back and stomach, as a result of which injury he was unable to follow his usual occupation.

He received compensation up to and including Nov. 19, 1912,

at which time the examining physician for the insurance company, Dr. Blake, said that Worden was a man who had suffered from rheumatism for some time, that his bones are twisted and out of shape, especially his hands, that he showed no signs of the injury, and that his condition was entirely due to rheumatism.

The case then went to arbitration, the injured man claiming that he was still unable to return to work. Worden, in the meantime, had moved to Lubec, Me. At the time of the arbitration hearing he did not appear, and the committee notified him to submit himself for an impartial examination at the Massachusetts General Hospital, under section 8, Part III. of the Workmen's Compensation Act, and the following is the report: "It is the opinion of the physicians who have examined Mr. Worden that his present symptoms are not due to the accident which occurred on Oct. 8, 1912."

The committee finds, therefore, that Thomas I. Worden's incapacity for work ceased on Nov. 19, 1912, and he is entitled to no further compensation.

JOSEPH A. PARKS.  
JOHN G. BRACKETT.

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CASE No. 87.

TRIANTAFILOS MONSOULIS, *Employee.*

C. B. MARTIN (TURK'S HEAD INN), *Employer.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

EMPLOYEE NOT ENTITLED TO COMPENSATION FOR ALLEGED  
INCAPACITY DUE TO INJURY. EMPLOYEE SUFFERING FROM  
SARCOMA ALLEGED TO BE DUE TO THE INJURY. IMPARTIAL  
OPINIONS FROM EXPERTS AGAINST THE EMPLOYEE.

The employee claimed to have sustained a strain in the right groin while engaged in putting a cake of ice in the ice chest at the hotel where he was employed. Later, he was operated upon at a hospital in New York, having a sarcoma removed. He was incapacitated for work at the time of the hearing. Impartial medical testimony showed that sarcoma, caused in the manner claimed, was extremely rare, and that in view of the history and evidence it was a pre-existing sarcoma at the time of the injury, to which said injury called attention.

*Held*, that the injury did not arise out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Triantafilos Monsoulis v. London Guarantee and Accident Company, Ltd., this being case No. 87 on the files of the Industrial Accident Board, reports as follows: —

After being duly sworn, the committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, N. P. Siprelle, Esq., for the insurer, and Daniel J. Daley, Esq., for the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board on Jan. 24, 1913, at 10 A.M.

The employee was engaged in the kitchen of Turk's Head Inn on Aug. 18, 1912, and he claims that on that day, while putting a cake of ice in the ice chest, he received a strain in the right groin, extending to the testicles. He was operated upon November 26 at the People's Hospital, 203 Second Avenue, New York, and had a sarcoma removed from his right testicle, and at the time of the hearing claimed he was still unable to work.

The insurance company agreed that there had been an accident on the date named, that the employee had received a strain of some kind, and also as to the location in which the pain was felt. A statement by George Pappas, the chef, supports this belief. The insurance company refused to recognize the claim on the ground that the accident did not cause the condition that existed afterwards, and on account of which the operation was performed.

Dr. Robert B. Dixon of 232 Clarendon Street, Boston, physician for the insurance company, saw the man Aug. 30, 1912, at the office of Dr. Roberts, 906 Washington Street. He claimed that a bunch had come in the groin as a result of the accident. Dr. Dixon examined him, found one testicle swollen and hard, and the injured man claimed it was tender. He could not say then as to the nature or cause of the trouble, except that ordinarily that sort of thing does come from some venereal trouble, and to have been the result of an injury there

would have had to be a direct blow in that region, and he understood that there had been no blow, but a strain from lifting. He submitted a certificate showing that the man had been operated upon, and that the testicle had been removed on account of a sarcoma. If this condition had soon followed a direct blow from some sharp object he would have connected the two; in the absence of the history of a direct blow he would be inclined to the opinion that it was a growth that came irrespective of the accident. There was no indication of abnormal temperature, which in the case of a strain would be evident at the time he examined him. That particular region is not particularly susceptible to strain from lifting. He would not have expected that there would have been opportunity for this sarcoma to grow and to develop to the extent it appeared to be, assuming that there had been a blow received on the 18th of August. Sarcoma is a very slow growth. As to the possibility of such a condition existing if there were nothing else to account for it, he said that "the condition occurs so frequently without any accident at all" that he would not have connected it with the accident. The examination showed growth, and sarcoma could not develop twelve days after a blow. His opinion was that it might have existed prior to his lifting the ice, and he might not have known it. It usually takes months and sometimes years to develop. His idea was that whatever happened that day produced some discomfort in that region, and drew his attention to it. Enlargement is slow, and there might not have been any pain previous to that time.

A certificate from the People's Hospital, New York, was offered in evidence, which showed that Monsoulis had been operated upon November 26.

The committee on arbitration thought it wise to get expert medical advice on the different phases of the case: first, as to whether a strain, as described, could have caused a sarcoma, and, second, as to whether it would have developed in the time covered since the injury.

Francis D. Donoghue, M.D., 864 Beacon Street, Boston, who is considered an expert on cancerous growths, examined the testimony and stated that in his opinion: —



*First.* — There was no direct violence to the groin. If there was violence it was indirect.

*Second.* — The examination twelve days after showed a swelling or an enlargement of the testicle "to be about double the ordinary size but not inflamed." If this were of gonorrheal origin there would be tenderness. If it were a late manifestation of syphilis or a new growth, such as sarcoma, we would not expect it to be tender.

*Third.* — The operation was made on November 26 in New York, but the size of the tumor at that time was not stated, so there is no way of determining the amount of growth between August 30, when it first came under direct observation, and November 26, when it was operated upon. The report says sarcoma.

*Conclusions.* — First, in proportion to blows upon the testicle, sarcoma is extremely rare. In proportion to tumors of the testicle, sarcoma is common, but not only where there is a definite history of direct violence but without violence.

It probably was a sarcoma on the thirtieth day of August, and it is extremely improbable that sarcoma would develop to the point that the testicle was twice its normal size and *not tender* in twelve days. If a sarcoma had been present, and been influenced by the accident or strain, it naturally would take the form of acute inflammation, which, if it caused enlargement, would be accompanied by pain.

*It therefore seems that, in view of all the facts, this was a pre-existing sarcoma to which the accident called attention, as tumors of the testicle, unless of slow growth, are extremely painful, bearing in mind the size of this growth twelve days after an indirect strain. From a consideration of all the facts, it is extremely improbable that there is any relation between the accident and the growth.*

The testimony was submitted to Charles Ober Kepler, M.D., 362 Commonwealth Avenue, Boston, who filed a written statement which is as follows: —

Q. Would a sarcoma develop from the strain described? A. I, of course, do not say that it is impossible for sarcoma to develop from a strain, as cancerous growths of all kinds are supposed to have some dependent relation upon various forms of irritation, and if a strain caused sufficient irritation, a sarcoma might be remotely its result. I am free to say, however, that I have never seen a sarcoma develop from a strain.

Q. Would a sarcoma develop from any cause within a period of twelve days? A. While there can be no doubt that some forms of sarcoma are very rapid in their growth, yet I believe twelve days to be altogether insufficient time for a sarcoma from injury to develop.

Q. Is a sarcoma of the testicle a common occurrence? A. It is by no means uncommon, and while it is not an every-day occurrence yet it is met with fairly frequently by surgeons of wide experience.

I have read over your history of the case with a great deal of care. I am impressed with the fact of the shortness of time that elapsed between the injury and the finding of the tumor. Several things I think need to be considered. One is the fact that many people have tumors that escape their observation entirely until something happens either to the growing tumor itself or in its immediate neighborhood that would serve to call attention to it, and the owner will naturally suppose that it was caused by the injury that first caused him to notice it. Another thing is this: I would want to be very sure that this enlarged testicle had been diagnosed sarcoma by a pathologist who had examined it in section under the microscope, and whose word cannot be gainsaid. I can see how a heavy strain, such as this patient probably endured, might cause a rupture in the inguinal region, forcing the bowel into the testicle sac, or it might cause a hydrocele of the cord which might simulate tumor formation, but I cannot see how it is possible for such an accident to produce a sarcoma of the testicle *de novo*. While sarcomas do undoubtedly occur in response to injuries of various kinds, yet it is a well known fact that they also occur without the slightest history of previous injury as a causative factor.

I myself, in the last two weeks, have removed a sarcoma of the buttock in which the patient had no injury at all. This sarcoma, by the way (it may be of interest to you apropos of your case), to the patient's own personal knowledge was about the size of a wart when first noticed by the patient, and remained in a quiescent state for nine years before it began to grow or show active symptoms.

In addition to the above, Dr. A. H. Morrison, 353 Massachusetts Avenue, Boston, and Dr. A. H. Thomasson, 106 Warren Street, Roxbury, confirm in substance the opinions of Drs. Donoghue and Kepler.

The committee of arbitration, after carefully weighing the evidence in the case, and considering the opinion expressed by the physicians consulted, finds that there was no direct connection between the injury sustained and the sarcoma complained of, and that, therefore, the employee is not entitled to compensation under the statute.

JOSEPH A. PARKS.  
N. P. SIPRELLE.

CASE No. 88.

ROBERT HARNEY, *Employee.*

DARTMOUTH MANUFACTURING CORPORATION, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK. REPORT OF IMPARTIAL PHYSICIANS INDICATES  
THAT INCAPACITY ACTUALLY EXISTS.

The employee claimed compensation for an injury which occurred on Oct. 21, 1912, stating that while putting a beam into a loom one end slipped and struck his leg, badly bruising it. The insurer refused compensation, claiming that the injury did not occur. It developed at the hearing that the injury actually occurred, and the employee was requested to submit himself for examination to two impartial physicians to ascertain whether his incapacity for work still continued. The physicians reported that he was then incapacitated and that incapacity would continue to a future date.

*Held*, that the employee was entitled to compensation during incapacity, in accordance with the report of the impartial physicians.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Robert Harney v. Massachusetts Employees Insurance Association, this being case No. 88 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Gerrett Geils, Jr., representing the employee, and Henry S. Knowles, representing the insurer, being duly sworn, heard the parties and their witnesses at the Common Council Chamber, New Bedford, Mass., Friday, Feb. 28, 1913, at 10 A.M., and Friday, April 18, 1913, at 10 A.M.

Robert Harney was employed as a loom fixer with the Dartmouth Manufacturing Corporation of New Bedford. While in the course of his employment on Oct. 21, 1912, putting a beam into the loom, one end slipped out, and the shaft of it struck his leg, bruising it.

The case went to arbitration on the contention of the insurer that it was in doubt as to whether or not the accident occurred,

and also as to whether or not the condition complained of was the result of the accident. The first hearing was held on Friday, February 28, as above stated, at which the insurance company was not represented; consequently a second hearing was called, before which, at the suggestion of the said company, Robert Harney was examined by Edwin P. Seaver, M.D., and P. H. O'Connor, M.D., of New Bedford.

After examination of the injured man, the following report was submitted:—

MARCH 27, 1913.

*Industrial Accident Board, Commonwealth of Massachusetts.*

DEAR SIRs:— In the case of Robert Harney, injured Oct. 23, 1912, at the Dartmouth Manufacturing Corporation, we the undersigned have determined the following: that the condition of his leg at the present time is partially the result of the injury received; that the relatively slight injury was capable of producing the disability as claimed, due to the fact that there is a previously existing varicose condition of the veins of that leg; that there is a reasonable suspicion of an underlying specific infection; and that the habits of life of this claimant are such as to make him easily susceptible to infection, from which he would be slow to recover.

Respectfully submitted,

EDWIN P. SEAVER, Jr.  
P. H. O'CONNOR.

At the adjourned hearing on Friday, April 18, after two witnesses had testified, Mr. Tuttle for the insurance company admitted that the accident had occurred as stated.

The committee finds, therefore, that said Robert Harney was injured in the course of his employment and is entitled to medical attention during the first two weeks after the injury, and beginning on the fifteenth day to compensation at the rate of \$7.43 per week, being half his average weekly earnings which are \$14.85, up to March 7, 1913, at which time his incapacity ceased.

JOSEPH A. PARKS.  
GERRET G. GEILS, Jr.  
HENRY S. KNOWLES.

CASE No. 89.

WALTER J. JEROME, *Employee.*

EDWARD D. WARD, *Employer.*

TRAVELERS INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK.

The employee claimed compensation on account of further incapacity for work as a result of the injury, the insurer denying that incapacity existed. The evidence indicated that the employee was incapacitated at the time of the hearing. *Held*, that the employee was entitled to compensation on account of incapacity for work, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Walter J. Jerome *v.* Travelers Insurance Company, this being case No. 89 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, representing the Industrial Accident Board, chairman, John W. Sheehan, representing the employee, and Winfred H. Whiting, representing the insurer, heard the parties and their witnesses at the Common Council Chamber, City Hall, Worcester, on Monday, Jan. 27, 1913, at 11 A.M.

There was no dispute as to the date of the accident; the manner in which it occurred, nor the average weekly wage, as the injured employee was receiving considerably more than \$20 a week and would be entitled to the maximum under the law. The sole question at issue was as to the duration of the incapacity. An agreement was reached by counsel that compensation should be paid up to and including Feb. 28, 1913, on which date incapacity would probably end, this without prejudice to either party.

DUDLEY M. HOLMAN.

JOHN W. SHEEHAN.

WINFRED H. WHITING.

CASE No. 93.

CAROLINE MILLIKEN, DEPENDENT OF FRANK T. MILLIKEN,  
*Employee.*

A. TOWLE & COMPANY, *Employer.*

TRAVELERS INSURANCE COMPANY, *Insurer.*

WIDOW OF EMPLOYEE WHOSE DEATH RESULTED FROM LOBAR  
PNEUMONIA, CAUSED BY COLD AND EXPOSURE, ENTITLED  
TO COMPENSATION.

The employee was a driver and had been engaged during the day of Oct. 8, 1912, at his regular work, driving a delivery wagon. He was directed at 5 o'clock in the afternoon to drive his horse and wagon back to the stable. He was not seen by any one after this direction had been given him until he was found the following morning lying in a swamp in the city of Woburn, covered by mud and water, with the exception of his head. He was taken to a hospital, but never recovered a normal or rational consciousness, dying a few days later. He could give no explanation of where he had been or what had occurred, but spoke in a delirium only of looking for his horse. The immediate cause of his death was lobar pneumonia, caused by cold and exposure.

*Held*, that this was an injury arising out of and in the course of his employment.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration, Mr. Carroll dissenting.

Appealed to Supreme Judicial Court.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Caroline Milliken *v.* Travelers Insurance Company, this being case No. 93 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, William C. Prout, representing the insurer, and John F. Lynch, representing the widow, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Thursday, Feb. 6, 1913, at 10 A.M.

The arbitrators, being duly sworn, report and find as follows: —

The evidence showed that the employee, Frank A. Milliken, a man of fifty-two years of age, had been in the employ of A. Towle & Co., the employer, as a driver or teamster for

about twenty-seven years prior to the incidents which caused his death hereafter referred to.

Some four or five years ago he received an injury from an accident through falling from his wagon and striking on his head while in the course of his employment. He was a strong and healthy man before this accident, but was never so well afterwards, having particular trouble from an impairment of his memory and a gradual loss of vision of one eye.

On one occasion, in July, 1912, his power of memory failed him so completely that while driving in the course of his duties in Boston, in the daytime, he could not remember where he was or identify the places or the street in which he then was, although he had been thoroughly familiar with the street and adjacent places and neighborhood for years. He recovered from this lapse and inability at that time in about half an hour, and was then able to continue his work.

On Oct. 8, 1912, he had worked during the day at his regular work, driving a delivery wagon, but had not called on various parties to receive bundles and packages for transportation as his duties required, and as he was expected to do, and had made several reports to his foreman, Mr. James Hennessey, that he had not received merchandise from certain regular customers because they were not ready to be taken, which reports were contrary to the facts, this being due to some failure of memory and mental powers, and said foreman had also noticed a peculiar look to his eyes and a strangeness of manner during the day. He was directed by his foreman, Mr. Hennessey, about 5 o'clock on that day to drive his horse and wagon back to the stable where they would be kept for the night. This driving to the stable for such purpose was a part of his regular work and duty.

He received this direction at 41 Matthews Street, Boston, his employer's office. The stable was located at Miller Street, Charlestown, about two or three miles away. He was seen by Hennessey a few minutes afterwards driving through Post Office Square, Boston, not far from Matthews Street, apparently driving all right in the usual route to the stable. At some place between Post Office Square and the stable in Charlestown he was seized with such a loss of memory and mental faculties that

he was unable to recognize streets and places, and on account of such disordered mental condition he became lost and unable to direct the horse to the stable.

No evidence was introduced, or question suggested or raised as to intoxication, and it was agreed by the parties and found by the arbitrators to be a fact that his memory was lost and his mind and faculties disordered without fault of his own, and that he thereby lost his sense of locality, places and distances. He drove the horse while in this condition through some streets or ways until he was seen by a witness in Burlington, Mass., in a narrow private way at about 11 o'clock P.M., riding around in the dark. He apparently wanted to get out of this private way onto the road, and the witness assisted him with a lantern in so doing, and directed and saw him drive away toward Lowell. The witness could not get Milliken to speak at all.

He was not seen by any one after this driving the horse and wagon, and was found the following morning at about 6 o'clock by parties who heard him crying out, lying in a swamp or brook in the city of Woburn, covered by mud and water, with the exception of his head. His hat was found on an adjacent road about 200 feet distant, and the horse, attached to the wagon, was found standing by the side of said road about half a mile distant in the direction of Boston.

Milliken was taken to a hospital in Woburn and attended by physicians, but never recovered a normal or rational consciousness. He died a few days later at said hospital on October 14. He could give no explanation of where he had been or what had occurred, but spoke in a delirium only of looking for his horse.

The immediate cause of his death was lobar pneumonia caused by cold and exposure while lying in the swamp and water, as above described, and during the night preceding. A condition of paralysis was also observed on one side of his body while he was at the hospital before his death, due to a hemorrhage in the brain. In the opinion of the physician who observed his condition before his death, this hemorrhage and paralysis were caused by the exposure and cold while in the swamp, which had induced a congestion of blood in the brain, and the committee finds that both said hemorrhage and



pneumonia were caused by said cold and exposure. In the opinion of the attending physician, the deceased might have lived years afterwards so far as the effects of the hemorrhage and paralysis were concerned, and the actual cause of the death was the pneumonia, as above stated.

The committee finds that the wanderings of the deceased commenced while driving on his way from Post Office Square to the stable, as aforesaid, in the course of his duties, and that his subsequent wanderings were in the course of an effort to find the stable and get his horse to it for the purpose of putting him there for the night, and that his work and duties as driver, and the matters and forces with which he was dealing and subject to at the beginning of and during his mental disorder, particularly the horse and wagon, were contributing causes to the occurrences and conditions which brought about his death, and without which contributing causes his death would not have occurred. The committee, therefore, finds that his injuries and death arose out of and in the course of his employment.

The committee finds that his average weekly wages at the time of receiving his injuries and death were \$13; that he left a widow, Caroline Milliken, who was wholly dependent upon his earnings at the time of said injury and death, and that she is entitled to a weekly compensation of \$6.50 for a period of three hundred weeks, dating from Oct. 9, 1912, the date when said injury was received.

DAVID T. DICKINSON.

JOHN F. LYNCH.

*Dissenting Opinion.*

I respectfully dissent from the findings of the Board in the above case, for the following reasons:—

1. That pneumonia is not a personal injury within the meaning of the act.
2. That it does not appear that the death of the employee arose out of his employment or can be attributed, even indirectly or in part, to it.

Assuming that the illness commenced while the employee was in the course of his employment, nothing more has been shown than that it was coincident with such employment. It

has not been shown that the injury "arose out of" as well as "in the course of" his employment, as provided by the act. All the evidence shows that the sole cause of the misfortune was the mental condition of the employee on the afternoon or evening preceding his wandering away, and that but for such mental aberration what subsequently happened could not have occurred.

Further, all the evidence, including the medical testimony, shows that the man's mental condition did not arise out of his employment. Since it appears that the illness cannot be traced, either proximately or remotely, to the man's employment, I am forced to dissent from the finding of the majority of the Board.

3. Although there is very little dispute as to the facts, I find that the statement of the majority of the Board is not strictly in accordance with the testimony in one or two particulars which, however, may not be decisive. I refer especially (1) to the testimony concerning the action of the employee during his last afternoon's employment, upon which the evidence was conflicting, and I doubt if any of it went quite as far as found by the Board; (2) the statement of the medical testimony, which the Board finds was to the effect that the exposure of the employee caused paralysis, cerebral hemorrhage and pneumonia, which is not my recollection of his testimony, although probably not of great importance.

WILLIAM C. PROUT.

*Findings and Decision of Industrial Accident Board on Review.*

After due hearing and argument of counsel, the Industrial Accident Board affirms and adopts the findings of the committee of arbitration, except as follows, and further expressly finds and decides: —

That the loss of memory with which the employee, Milliken, was seized was not in itself a fatal disorder, and that he would not have met his death as he did but for the horse and wagon and his effort to get them to the stable. The case was not one of those in which an employee was on a lark, errand or purpose of his own, but seems to be within the principle of *Sneddon et als. v. The Greenfield Coal & Brick Co., 3 Butterworth,*

W. C. C. 557; Wicks (or Wilkes) *v.* Dowell, 2 K. B. 225; 74 L. J. K. B. 572; Parsons and Allen, Workmen's Compensation Act, 4th edition, p. 10; Milton-Senhouse, Vol. VII., p. 14; and Clover, Clayton & Co. *v.* Hughes, A. C. 242; 26 T. L. R. 359; Parsons and Allen, Workmen's Compensation Act, 4th edition, p. 10; 3 Butterworth, W. C. C. 275.

In the Sneddon case a miner got lost in an underground passageway, and after traveling a long distance in an effort to find his place of work met with an accident which caused his death. It was held that his death arose out of and in the course of his employment. In the Clover, Clayton & Co. and Wicks (or Wilkes) cases (*supra*) it was held that where the death was due to the combined cause of the employment and a personal infirmity, and would not have happened without the operation of both causes, the death arose out of and in the course of the employment. Although the English act, unlike the Massachusetts law, requires that the injury must result from "accident," it seems that the injury in the case at bar would be held by the English courts to have resulted from an accident.

The following cases defining the scope of employment may be pertinent as showing that Milliken was performing his duty at the time of his falling into the brook in an endeavor to find his way out of the road and get back to the stable. (Hayes *v.* Wilkins, 194 Mass. 223; McCarthy *v.* Timmins, 178 Mass. 378 at 381.)

In the latter case the court states, after referring to the fact that the driver had been directed to go to the stables, as follows:—

There can be no doubt that so long as he drove the team with that end in view and for that purpose and for no purpose of his own, he was engaged in his master's business, even if he made a detour contrary to the direction of his master.

It has been suggested in the present case that Milliken's employer might not have been liable if Milliken, by reason of the mental condition he was in, had driven over and injured a person in the highway, and that this therefore shows that Milliken was not then driving in the course of his employment. But

the reason that there might be no recovery against the master in such case would not be that Milliken was not acting in the course of his employment, but that negligence could not be shown in the acts of Milliken on account of his mental condition. The ground of liability under the Workmen's Compensation Act is that an injury simply arose out of and in the course of the employment, whereas in a suit at law it is based on the master's negligence. Furthermore, if the horse was the cause of Milliken being carried to the place of injury, as it undoubtedly was, as Milliken was hardly more than an automaton in what he did in driving, the injury must be held to have arisen out of his employment, because this was the danger to which he was exposed by his employment at the time of his abnormal mental seizure. His subsequently being carried from where he wished to go was just as much a matter of chance and accident as if the horse had been running away, in which latter case there would seem to be no doubt that the accident or injury would have arisen out of his employment.

DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

*Dissenting Opinion.*

I am unable to agree with the majority of the Industrial Accident Board in this case because I do not think it can be found that the injury arose out of and in the course of Mr. Milliken's employment. In order to entitle an employee to recover under the Workmen's Compensation Act he must at the time of the injury be engaged in the services and employment of his employer, and the employment must be the cause or the occasion of the injury. At the time Mr. Milliken met with his injury and death he was not on any business of his employer. Whatever caused him to depart from the sphere of his duties, whether the departure was intentional or not, he was not engaged in doing the work for which he was hired, and it cannot be said that any instrumentality belonging to his employer brought him into this place of danger so far removed from

any place where his employment called upon him to be. If, through loss of memory or some defect of mind, or from any other such cause, he was taken outside the course of his work he cannot charge the employer for the consequences. Neither can it be said in a case like this that his employment occasioned his injury and death.

JAMES B. CARROLL.

CASE No. 95.

WALTER A. SMITH, *Employee*.

UNITED STATES HOTEL COMPANY, *Employer*.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

EMPLOYEE CLAIMING TO BE INCAPACITATED FOUND NOT TO HAVE RECEIVED A PERSONAL INJURY. NO COMPENSATION DUE.

The employee claimed to have received an injury as a result of the fall of the heavy cover of a washing machine in the laundry of the hotel in which he was employed. Fellow employees knew nothing of an injury occurring and the medical testimony was unfavorable.

*Held*, that the employee did not receive a personal injury arising out of and in the course of his employment.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Walter A. Smith v. Employers' Liability Assurance Corporation, Ltd., this being case No. 95 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney of Boston, representing the Industrial Accident Board, chairman, John G. Brackett of Boston, representing the insurer, and Jerome A. Pettiti of Boston, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, in the Pemberton Building, Boston, Mass., Friday, Jan. 31, 1913, at 10 A.M., and Friday, Feb. 7, 1913, at 10 A.M.

The employee claimed that he was injured while in the employ of the United States Hotel Company, Boston, between 2 and 3 o'clock on the afternoon of Sept. 3, 1912, this injury

being caused by the cover of a washing machine striking him on second and third fingers of the left hand while taking out clothes, this cover weighing about 40 pounds. The United States Hotel Company had no report of the alleged injury, claimed that it had no knowledge thereof; the insurer further claimed that the injury, if any, was the result of rheumatism, and not due to his employment.

The employee testified that the injury occurred as claimed and that he was attended by Dr. F. W. Comstock of the Grace Hospital, September 4, where a splint was placed upon his fingers. There was no abrasion or cut. When the injury occurred he swore and looked around to see if any one was looking, but made no further complaint at that time. Since the injury he had not been able to perform any work until four weeks prior to February 7. Re-examined at the close of the hearing, employee stated that at the time the cover fell he had a number of sheets in his hand which had broken the force of the blow.

Dr. F. W. Comstock testified that the diagnosis was uncertain, either rheumatism or sepsis being indicated. There was no abrasion of the left hand, and from his knowledge of the case he would say it was either rheumatism or inflammation of the joint from the blow.

Mrs. Annie King, a co-employee testified that she heard him swear on the day he claimed to have been injured. That was all she knew about it.

Mary Nee, another employee, knew nothing of the accident.

Mrs. Nellie Donovan, the head laundress, testified that he had not informed her that he had incurred an injury, but that noticing him working on Wednesday or Thursday, asked him what the matter was. He said he did not know and let her see his hand. It was red and sore and looked to her like inflammatory rheumatism. He said he would not be surprised if that were so, as he had had it before. She stated that the cover on the washer weighed about 35 or 40 pounds, and had it fallen on his hand it would have broken his fingers. There was no evidence to indicate that he had been hurt in the manner claimed. She took him to the hospital and provided treatment for him.

Mrs. Catherine Blunt, who worked in the linen room, knew that the employee's hand was sore, but testified that the employee did not say anything about the cover of the washing machine having fallen upon it.

John Dorzio, employed on the same washing machine that the employee used, had no knowledge of the injury stated. If the cover of the machine had fallen on the employee's hand, it would cut the fingers off.

*Held*, that the weight of evidence indicates that the employee, Walter A. Smith, was not injured in the course of his employment, and that he is not entitled to any compensation, under the provisions of the Workmen's Compensation Act.

EDW. F. MCSWEENEY.

JOHN G. BRACKETT.

In the above case I find that the facts are as above stated, but I hold that the weight of the evidence in the case indicates that the employee, Walter A. Smith, was injured in the course of his employment, but that I further find the said injury was of no material consequence and did not cause his subsequent disability. Therefore, I concur in the findings of the majority of the Board to the effect that the said Walter A. Smith is not entitled to compensation under the provisions of the Workmen's Compensation Act.

JEROME A. PETTIT.

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CASE No. 98.

WILLIAM HECTOR, *Employee*.

H. E. HAGAN, *Employer*.

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer*.

EMPLOYEE INJURED WHILE RUNNING AFTER BOYS NOT ENTITLED TO COMPENSATION UNDER THE ACT.

The employee, a porter, while in another building obtaining hot water for the purposes of his occupation, ran after some boys who were in the building, and while so engaged was injured by reason of the slamming of a door, receiving a cut on the hand. It was no part of his employment to clear the building of trespassers, his work being entirely in another building.

*Held*, that the injury did not arise out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Hector v. Frankfort General Insurance Company, this being case No. 98 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Capt. Henry D. Crowley, for employee, and Horace G. Pender, for insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, May 6, 1913.

We find that William Hector of 13 Pine Street, Cambridge, Mass., was employed by H. E. Hagan, The Oblast Shoe Store in the Amory Building, 505 Washington Street, Boston, Mass., as a porter. That his average weekly earnings were \$10. That on December 11 Hector went into an adjoining building where he was accustomed to go to get hot water for the purpose of washing floors and general cleaning. That while there he chased some boys and that one of the boys slammed a door leading from a toilet, and in trying to prevent it closing Hector put his hand through the glass in the door, receiving a cut upon the hand. Hector denied that he was chasing the boy and claimed that as he was coming out of the door where he got his pail full of hot water one of the boys slammed the door to on him, and his hand was caught in attempting to prevent the door from closing. An investigation of the premises showed that there was no glass in the door where Hector was obliged to go to obtain his hot water, but the glass was in an adjoining toilet, and we find that his injuries did not arise out of or in the course of his employment, but were received on the premises of his employer through fooling with boys employed in another store, and that he is not entitled to recover compensation.

DUDLEY M. HOLMAN.  
HENRY D. CROWLEY.  
HORACE G. PENDER.



CASE No. 99.

MICHAEL J. WELCH, BY BRIDGET WELCH, MOTHER, *Employee*.  
GEORGE MCQUESTEN COMPANY, *Employer*.  
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

DEPENDENT MOTHER OF EMPLOYEE, WHO RECEIVED AN INJURY WHICH RESULTS FATALLY, ENTITLED TO COMPENSATION. EMPLOYEE HAD CHRONIC VALVULAR DISEASE OF THE HEART, DEATH RESULTING FROM THE SHOCK CAUSED BY HEAVY WHEEL FALLING UPON HIM.

The employee was a teamster, and while taking off a 313-pound wheel for the purpose of greasing the axle it fell upon him, the employee dying on his way to the hospital. The evidence of fellow employees indicated that he was in his usual normal condition of health when he took the team out in the morning, and his stable foreman testified that he was a temperate, reliable and competent man. The medical examiner stated that the employee had chronic valvular disease of the heart and that the shock of the fall of the wheel might have caused death.

*Held*, that the injury arose out of and in the course of his employment, the exertion of jacking up the wagon and the falling of the wheel upon the employee affecting a previously diseased heart and causing death, and that the mother is entitled to compensation, being totally dependent upon him for support at the time of the injury.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael J. Welch, employee, by Bridget Welch, his mother, *v.* the Employers' Liability Assurance Corporation, Ltd., this being case No. 99 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney of Boston, chairman, Joseph F. O'Connell of Boston, representing the insurer, and E. F. Damon of Boston, representing the mother of the employee, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Thursday, Feb. 13, 1913, at 10 A.M.

Michael J. Welch was employed as a teamster by George

McQuesten Company, receiving an average weekly wage of \$15. He lived with his mother, Bridget Welch; paid over to her all his earnings, and she was wholly dependent upon him.

On the morning of Friday, Jan. 3, 1913, about 7.30 o'clock, Welch had taken his wagon into the front of the stable on Border Street for the purpose of greasing the wheels. This wagon was what is known as a 5-ton truck, being capable of carrying 5 tons and actually weighing about 2 tons. Welch had taken off the nut at the end of the axle, and was obviously engaged in greasing one of the wheels, which weighed 313 pounds. There was no witness as to what followed.

Joseph Rock, a driver for the Metropolitan Coal Company, of 22 Broadway, Chelsea, found Welch lying on the street, his right leg under his left leg, and the 313-pound wheel resting on him, with the hub over the umbilicus. A part of the rim of the wheel was resting on Welch's left shin and another part on the street. The wheel was removed by Rock, Welch was picked up, gasping for breath, and laid on the sidewalk. An ambulance was sent for by John H. Keyes, the stable foreman. Welch was dead when he reached the Relief Hospital.

Dr. George Burgess Magrath, M.D., one of the medical examiners for Suffolk County, testified that the autopsy showed that Welch had chronic valvular disease of the heart, with resulting overgrowth and enlargement and the dilatation that goes with it, which diseased condition of the heart had existed for a considerable period, — months or perhaps years. Dr. Magrath testified that there were no medical facts which would indicate whether Welch dropped dead dragging the wheel upon him, or whether he fell dragging the wheel down; much would depend on whether he was living when found. Dr. Magrath's testimony was suspended while Rock, the teamster, who first saw Welch after the injury, testified that the deceased was living when found.

Other evidence was offered that when the deceased employee, Welch, had taken out his team in the morning he appeared in normal health. His stable foreman testified that the deceased was a temperate, reliable and competent man.

Dr. Magrath then proceeded with his testimony, that assuming a diseased condition of the heart such as was found, the fall of this heavy wheel on the stomach, under the circumstances,

might bring about a condition of shock that would result in the death of Welch; given the extensive and serious disease of the heart presented, the falling or tottering over onto the body of such a weight as this 313-pound wheel might produce such a shock as would bring about death. At the same time Dr. Magrath said that the man's heart was in such a condition that he might have dropped any time and anywhere.

*Findings.*

The arbitrators find that the deceased was living when found by Rock, and that death was brought about by one of two causes, namely:—

1. The exertion of jacking up wagon, loosening the nut and pulling out the wheel brought about a strain on the heart which caused a weakness resulting in his fall, pulling the wheel down on top of him, as stated, causing the additional shock which ended in death.

2. The 313-pound wheel slipped from the axle and carried Welch to the ground, the hub resting on his abdomen, causing a shock which acting on his diseased heart resulted in his death.

In either case it seems a legitimate inference from the facts that his death was due to a personal injury arising out of and in the course of his employment; and, in the words of Lord Loreburn, quoted in the case of *Clover, Clayton & Co. v. Hughes*, "In such a case the accident arises out of the employment, when the required exertion producing the accident is too great for the workman, whatever the degree of the exertion or the condition of the workman's heart."

The arbitrators further find that Bridget Welch, the mother of the deceased, was, at the time of the injury, wholly dependent for her support upon the deceased, Michael J. Welch, and is entitled to one-half his average weekly wages, or \$7.50 a week, for a period of three hundred weeks from the date of the injury.

EDW. F. MCSWEENEY.

E. F. DAMON.

I dissent from above findings of fact and conclusions.

JOSEPH F. O'CONNELL.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, March 18, 1913, at 11 A.M., and affirms and adopts the findings of the committee of arbitration.

Counsel for the insurer made the following requests for rulings: —

1. Upon all the evidence the Board must find that said employee's injuries did not arise out of and in the course of his employment, and the finding must be for the insurer.

2. The burden is upon the dependents to prove that said employee's injury arose out of and in the course of his employment.

3. If upon all the evidence it is a matter of conjecture as to whether or not the employee's injury arose out of and in the course of his employment, the finding must be for the insurer.

4. Upon all the evidence the Board must find that it is a matter of conjecture whether or not the employee's injury arose out of and in the course of his employment, and the finding must be for the insurer.

5. If the Board finds that the falling of a wheel upon the employee was not the direct and proximate cause of his injury the finding must be for the insurer.

6. There is no evidence to warrant a finding that the wheel fell or started to fall upon said employee before he was seized with an attack of heart disease.

7. If the Board finds that the evidence is equally as consistent with said employee's having fallen with an attack of heart disease, and in falling knocked the wheel upon himself, as it is consistent with the wheel tilting over towards him and causing heart disease, the finding must be for the insurer.

8. There is no evidence to show that the employee's heart disease was aggravated, brought on by or in any way caused by a wheel falling upon him. page 1

The Board gave the second and third requests and refused the others.

The Board, following the case of *Clover, Clayton & Co. v. Hughes* (1910), 79 L. J. K. B. 470, finds that as a result of the exertion of jacking up the wagon and the falling of the heavy wheel upon the employee, and of the effect of this upon his heart which was in a previously diseased condition, he met his death, and that the said injury, therefore, arose out of and in the course of his employment. .

The Board further finds that Bridget Welch, mother of the deceased employee, was at the time of the injury wholly dependent upon him for support, and that she is entitled to the payment of one-half his average weekly wages of \$15; that is, to \$7.50 a week for a period of three hundred weeks from the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 101.

JOHN COX, *Employee*.

AMERICAN STEEL AND WIRE COMPANY, *Employer*.

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

WHEN INCAPACITY FOR WORK CEASED. COMPROMISE FIND-  
ING, BASED UPON REPORT OF IMPARTIAL PHYSICIAN.

The employee was injured while tightening a "buggy" on a straightening bench; while working for the American Steel and Wire Company, being struck on the left side of the head by a piece of wire swinging from another machine. His scalp was injured. The examining physician testified that on Dec. 16, 1912, three weeks after the injury, there were no objective signs of the injury and the employee stated that he was ready to resume work. He filed a claim, however, for compensation on Jan. 27, 1913. The examining impartial physician appointed by the committee diagnosed the case as traumatic neurosis, which might prevent him from working for a few weeks.

*Held*, that the employee was entitled to one-third of the amount claimed.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Cox *v. Massa-*

chusetts Employees Insurance Association, this being case No. 101 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, Frank P. Ryan, representing the employee, and George Jeppson, representing the insurer, heard the parties and their witnesses at the Common Council Chamber, City Hall, Worcester, Mass., Thursday, Feb. 20, 1913, at 10 A.M.

It was agreed that the employee, John Cox, was injured Nov. 26, 1912, while tightening a "buggy" on a straightening bench. He was struck on the left side of the head by a piece of wire swinging over from another machine, an injury to his scalp resulting.

The case came to arbitration because of a dispute between the employee and the insurer as to when his incapacity for work, as a result of the injury, ceased. The employee claimed that he was entitled to payment for total incapacity from the fifteenth day after the injury, Dec. 10, 1912, to Jan. 27, 1913, inclusive, and the insurer claimed that his incapacity ceased Dec. 18, 1912.

Dr. W. H. Rose, for the insurer, testified that in his opinion there was no effect of the injury present at the time of his examination, Dec. 16, 1912, at which time the employee stated that he was ready to return to work. He had some personal business to attend to, however, and said he would not return until December 18. He returned on this date and gave up work at 12 o'clock noon, claiming to have a headache, working no more until Jan. 27, 1913.

It was brought out in evidence that the employee had been doing chores about the house, and that he had not consulted a physician with reference to the headaches which he complained of.

The committee of arbitration decided, in view of the wide difference in the claims of employee and insurer, to request Dr. Merrick Lincoln of No. 2 Lincoln Street, Worcester, to examine the employee, and he reported Thursday, Feb. 27, 1913, that the employee had suffered what is diagnosed as traumatic neurosis, and made the following statement: "I be-

lieve the headache such as he complained of might prevent his working for a few weeks, but I don't believe it to have been to his advantage to stay out of work as long as he did. I can only suggest some compromise settlement."

The committee of arbitration agreed, in view of the report of the physician, and bearing the testimony of the employee and attending physician in mind, to allow the employee one-third of the amount claimed by him as compensation, to wit: one-third of \$44.45, or \$14.82.

The committee therefore finds that the employee suffered from traumatic neurosis as a result of an injury arising out of and in the course of his employment, and that he is entitled to reasonable hospital and medical services and medicines during the first two weeks after the injury and to a payment of \$14.82 as compensation for the incapacity for work resulting from said injury.

JOSEPH A. PARKS.

FRANK P. RYAN.

GEORGE N. JEPFSON.

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CASE No. 102.

JOSEPH BOBVEICH, *Employee*.

WORCESTER BLEACH AND DYE WORKS, *Employer*.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY  
FOR WORK.

The sole question in this case was the duration of the incapacity for work of the employee as a result of the injury. The evidence indicated that further incapacity existed.

*Held*, that the employee was entitled to further compensation, in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Bobveich v. American Mutual Liability Insurance Company, this being case No. 102 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Hol-

man, representing the Industrial Accident Board, chairman, William A. Scollen, representing the employee, and William H. Rose, M.D., representing the insurer, heard the parties and their witnesses at the Common Council Chamber, City Hall, Worcester, on Friday, Feb. 14, 1913, at 10.30 A.M.

There was no dispute as to average weekly wages or date or facts of injury. The sole question, one of length of incapacity.

The evidence showed that the injury occurred on Oct. 10, 1912; that Joseph Bobveich was discharged from the hospital three weeks later, and went to work for the same employers on November 11, working a day and a half, when he quit because of inability to continue on account of the accident. He went to work on November 27 for the Reed & Prince Screw Company and afterwards, in January, returned to work for his old employers.

No evidence was introduced to show that he was able to return to work before November 27.

The committee finds on the weight of the evidence that Joseph Bobveich is entitled to compensation from the fifteenth day after the injury, namely, Oct. 24, 1912, to Nov. 26, 1912, inclusive, at the rate of \$4.75 per week for four weeks and four days, and to medical and hospital attendance during the first two weeks after the injury.

DUDLEY M. HOLMAN.  
WILLIAM A. SCOLLEN.  
WILLIAM H. ROSE.

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CASE No. 104.

HARRY F. BOYD (MARGARET T. BOYD, WIDOW), *Employee*.  
J. N. SMITH & Co., *Employer*.  
TRAVELERS INSURANCE COMPANY, *Insurer*.

INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF THE  
EMPLOYMENT. WIDOW NOT ENTITLED TO COMPENSATION.  
KICK OF HORSE IN JULY NOT THE CAUSE OF DEATH IN  
OCTOBER. COMMITTEE'S DECISION AFFIRMED ON REVIEW.

The employee, while working as a stableman, found that the foot of one of the horses was caught in the harness, and in releasing same claimed that the horse's hock struck him in the stomach. This occurred on July 19, 1912, or



some date prior to July 20, 1912, the date not being definitely fixed. His widow testified that he remained away from work two or three days afterwards, then returned to work, leaving once more for a week, and finally, on September 4, going to the City Hospital, where he died on Oct. 17, 1912. The medical testimony indicated that death was due to a hemorrhage into the gastrointestinal tract, the autopsy showing that the cause of the hemorrhage was a rupture of the cesophageal vein at the lower end of the cesophagus, and the condition of the vein was due to long-standing syphilitic infection. Impartial physician states, "I believe his death was not due directly or indirectly to the injury received by him."

*Held*, that the injury did not arise out of and in the course of the employment. Review before the Industrial Accident Board.

*Decision*.—The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Harry F. Boyd, employee (Margaret T. Boyd, widow), *v.* Travelers Insurance Company, this being case No. 104 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, John F. Lynch, representing the employee, and W. C. Prout, representing the insurer, heard the parties and their witnesses on Monday, Feb. 17, 1913, at 10 A.M., in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass.

On July 19, or some date previous to July 20, 1912, Harry F. Boyd, the deceased employee, while working as a stableman for J. N. Smith & Co. (his work being care of the stables and feeding horses; his wages being \$17 a week), found a horse's foot caught in the harness, and in releasing the same claimed that the horse's hock struck him in the stomach. In her testimony, his wife, Margaret T. Boyd, described the location of the blow as being on the left side right under the last rib; the appearance of the stomach as being swollen and black, nearly as large as the palm of her hand. He suffered at night. His wife testified that he stayed out for two or three days after he was hurt, went back to work for a time; stayed out for a week, went to Boston City Hospital about the 3d or 4th of September, and died on October 17.

Dr. William C. Clarke, 4 Charter Street, Boston, testified that he did not know of the accident until the 26th of July,

when Mrs. Boyd came to his office and said that her husband was kicked by a horse, and it caused him a little pain. Dr. Clarke sent him an external application, but did not see him until August 30, at which time he did not examine his stomach. Upon going to the house he found Boyd lying in bed, with pain radiating across the abdomen, constipated and feverish. He did not examine him and did not know whether he wore a bandage or not on that date. The lower part of Boyd's eyes usually had a yellowish look, suggesting torpid liver.

Dr. Manary, the executive assistant at Boston City Hospital, read a report of the record of the City Hospital, showing that the diagnosis made was syphilitic cirrhosis of the liver.

Dr. F. S. Graves, who performed the autopsy at the City Hospital, read and testified from the report of the autopsy, in detail, as to the condition discovered by this autopsy, in effect, that the cause of the death was a hemorrhage into the gastrointestinal tract, the cause of the hemorrhage being a rupture of the œsophageal vein at the lower end of the œsophagus, and the condition of the vein was due to long-standing syphilitic infection.

Louis C. Doyle, the attorney for the Travelers Insurance Company, submitted an "Abstract from Out-patient Records, Massachusetts General Hospital," which showed that on Nov. 2, 1909, the deceased Boyd had gone to the hospital for treatment, the records showing "Chronic alcoholism-hepatic cirrhosis. Enlarged spleen."

William H. Sullivan, attorney for the widow of the deceased, Boyd, submitted a written statement, by Dr. J. P. A. Nolan, that the illness dated from the time the horse kicked him, and from Dr. W. C. Clarke that the death of Mr. Boyd was accelerated, at least, by the blow from the horse.

By agreement the arbitrators submitted all the testimony and facts in the case to a medical expert, Dr. Thomas F. Leen, 527 Beacon Street, physician in chief at the Carney Hospital, etc., who, under date of March 11, 1913, reported as follows:—

As regards the case of *Boyd v. J. N. Smith*, the testimony of which you sent me, I wish to say the following:—

Boyd's autopsy showed syphilitic cirrhosis of the liver, which he showed evidence of at the Massachusetts General Hospital, Nov. 21, 1909. This

cirrhosis prevented the blood flowing from the veins of the stomach to the liver, hence, as it could not go its natural way, the veins became overloaded and overstretched and bulging, so that the venous walls were thinned; and this took place where it generally does in this disease, where the gullet enters into the stomach. The cause of death on Oct. 17, 1912, was that one of these ruptured, as is common in such cases; and he died after an estimated hemorrhage of two quarts.

Boyd, in July, 1912, got a poke from a horse, according to his wife, on the left side, right under the last rib. A week after he threw up a teaspoonful of blood. He got no personal medical attention till Aug. 30, 1912, when Dr. Clarke went to his home to treat him for pain in his left side. His superintendent says he was out of work only one-half day from accident to August 29, though he saw him about September 2, 3 and 4, when he went to the Boston City Hospital.

What was the cause of the teaspoonful of blood raised a week after the accident? If it were due to a rupture of one of the above-mentioned bulging veins he would have had a much greater hemorrhage, due to the back venous pressure; and if a horse-kick a week before this teaspoonful of hemorrhage had ruptured a vein at that time, he would have had a hemorrhage within a few hours, and much more than a teaspoonful. But the kick was at a point away from his anatomical stomach, in the words of his wife, where the black-and-blue mark was, on the left side, right under the last rib, which was nearer left kidney than stomach.

Therefore, I believe probably his death was not due directly or indirectly to the injury received by him.

*Held*, that the death of the deceased, Harry F. Boyd, was not due to a personal injury arising out of or in the course of his employment, and the dependent widow is not entitled to any compensation.

EDW. F. MCSWEENEY.

WILLIAM C. PROUT.

JOHN F. LYNCH.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, April 1, 1913, at 11 A.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds that the injury sustained by the employee in July, 1912, was not directly or indirectly the cause

of his death, so that his widow, Margaret T. Boyd, is not entitled to compensation under the statute.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 105.

MICHAEL JEMIZIJ, *Employee*.  
TAUNTON-NEW BEDFORD COPPER COMPANY, *Employer*.  
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

EMPLOYEE WHOSE EYE WAS DISEASED PRIOR TO INJURY,  
ENTITLED TO THE ADDITIONAL COMPENSATION PROVIDED  
IN THE ACT. PRIOR TO INJURY EYE HAD FIFTY PER  
CENT. OF VISION. EYE AFTERWARDS REMOVED. COMMIT-  
TEE'S DECISION SUSTAINED ON REVIEW.

The employee claimed "additional" compensation, under section 11, Part II. of the act, the evidence indicating that while the eye was diseased he had 50 per cent. of vision in it. Because of the contention of the insurer it was decided that the eye be examined by one of the committee of arbitration, an eye specialist, and he reported that there was no question as to the fact that the employee had half vision in the eye before the injury.

*Held*, that the employee was entitled to fifty weeks' additional compensation on account of the loss of vision and to payment on account of total incapacity for work.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael Jemizij v. American Mutual Liability Insurance Company, this being case No. 105 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Timothy F.

O'Brien of New Bedford, representing the employee, and Edward M. Whitney, representing the insurer, heard the parties and their witnesses at the Common Council Chamber, New Bedford, Mass., Monday, Feb. 17, 1913, at 10 A.M.

It was agreed by the parties that there was no dispute as to the time and place of the injury. The insurer admitted that the employee sustained an injury on Monday, Nov. 25, 1912, while in the employ of the Taunton-New Bedford Copper Company, at its plant on North Front Street, New Bedford. It was further agreed that the injury resulted while the employee was engaged in "turning around with a wagon loaded with copper pieces, the handle of a ladle extending beyond the furnace top striking the right side of his nose and eye." As a result of this injury the eye was removed, and as there was some doubt in the minds of the representatives of the insurer as to whether the injury sustained caused the loss of the eye, the parties disagreed, and the matter came to the attention of the committee of arbitration.

Evidence offered in behalf of the employee by Frank Durda, a cousin, and Andrew Thusz, a fellow employee, corroborated him in his contention that he had vision in the injured eye prior to the accident. Durda's testimony was in effect that the employee could see as well out of that eye as out of the other one. He testified that he had often tested the employee's sight, when younger, by placing his hand over the remaining eye, and *vice versa*, and therefore knew that his sight was good. Thusz testified that to his knowledge the employee had been able to see out of it. He had not noticed anything except a scar which had not, so far as he knew, affected the vision.

The committee deemed it proper, as a matter of justice to the parties, to have the injured eye examined, and it was agreed that Dr. Edward M. Whitney, who represented the insurer, and who was an eye specialist, call upon Dr. E. D. Foster, in whose possession the eye was, and examine it to ascertain if there was any doubt as to the condition of the eye prior to the injury. If such doubt existed the committee would name an impartial specialist, under section 8, Part III. of the statute, to file a report.

Dr. Whitney reported that while there was evidence that the

eye was diseased prior to the injury, the employee had about 50 per cent. of normal vision at that time.

The committee thereupon agreed that the injury resulting in incapacity for work and the loss of the sight of the right eye arose out of and in the course of the employment of Jemizij, and finds that he is entitled to reasonable medical and hospital services and medicines during the first two weeks after the injury, to wit: from Nov. 25, 1912, to Dec. 8, 1912, inclusive, and to compensation based upon half his average weekly wages of \$9.50, or \$4.75 per week from Dec. 9, 1912, to Feb. 17, 1913, inclusive, and to the additional payment of \$4.75 per week for a period of fifty weeks from the date of the injury, Nov. 25, 1912, under section 11, Part II., subsection "b," for the "reduction to one-tenth of normal vision in either eye with glasses."

JOSEPH A. PARKS.

TIMOTHY F. O'BRIEN.

EDWARD M. WHITNEY.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, March 18, 1913, at 10 A.M., and affirms and adopts the findings of the committee of arbitration.

The request of the insurer that the injured eye be examined by an impartial expert, appointed by the Board, was refused, the committee of arbitration having previously had the injured eye examined by Dr. Edward M. Whitney, an eye specialist, who represented the insurer on the committee of arbitration, and who reported that while there was evidence that the eye was diseased prior to the injury, the employee had about 50 per cent. of normal vision at that time.

The Board further finds that as a result of the injury the employee sustained a total loss of the sight of the right eye, and that the said injury arose out of and in the course of the employment of Jemizij, and that the said Jemizij is entitled to reasonable medical and hospital services and medicines during

the first two weeks after the injury, to wit: from Nov. 25, 1912, to Dec. 8, 1912, inclusive, and to compensation based upon half his average weekly wages, \$9.50, or \$4.75 per week, from Dec. 9, 1912, to Feb. 17, 1913, inclusive, and to the additional payment of \$4.75 per week for a period of fifty weeks from the date of the injury, Nov. 25, 1912, under section 11, subsection "b," Part II. of the Workmen's Compensation Act, for the "reduction to one-tenth of normal vision in either eye with glasses."

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 107.

JOHN W. MILLIKEN, *Employee.*

J. M. ANDREWS & SON, *Employer.*

UNITED STATES FIDELITY AND GUARANTY COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION FOR INCAPACITY FOR  
WORK CAUSED BY PARALYSIS RESULTING FROM AN ELECTRIC SHOCK.

The employee was a foreman carpenter and was engaged in operating an electric power saw when he received an electric shock while turning off the electric power from the machine by means of a switch. His hand came in contact with the metal parts of the switch, and the shock threw him against the bench with such violence that it caused a sudden and unusual acceleration, force and pressure in the action of his heart so that paralysis resulted.

*Held*, that the injury arose out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John W. Milliken v. United States Fidelity and Guaranty Company, this being case No. 107 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, Esq., chairman, C. H. Manzer, for the employee, and Wil-

liam H. Sullivan, Esq., for the insurer, being duly sworn, heard the parties and their witnesses at the Committee Room, City Hall, Somerville, Mass., on Monday, Feb. 24, 1913, at 10 A.M., and finds as follows: —

That said employee was a foreman carpenter in the employ of J. M. Andrews & Son, and on Nov. 6, 1912, was operating a saw run by electric power in said Somerville; that on said date, when turning off the electric power from said machine by means of a switch, in the course of his employment, he received an electric shock by reason of his left hand coming in contact with the metal parts of said switch; that said shock threw him against the bench at which he was working, and caused a sudden and unusual acceleration, force and pressure in the action of his heart, and that this was followed at once by a numbness in said hand which gradually increased until it extended through his arm, body and leg on said left side until it caused a condition of paralysis, due to a slight hemorrhage in the brain, caused by said disturbance of the heart; that said employee continued to work with some difficulty until the afternoon of Nov. 8, 1912, and has been wholly incapacitated for work by reason of said injury and the ensuing paralysis since the last-mentioned date, and continues to be so incapacitated, and that said injury, paralysis and incapacity were received in the course of and arising out of his said employment; that his average weekly wages at the time said injuries were received were \$20, and that there is due him from said insurer as compensation, by reason of the above, a weekly payment of \$10 during said total incapacity, beginning Nov. 21, 1912.

DAVID T. DICKINSON.  
WILLIAM H. SULLIVAN.  
CHARLES H. MANZER.



CASE No. 110.

JACOB HAWOSZ, *Employee.*

S. SLATER & SONS, INCORPORATED, *Employer.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY FOR WORK. EVIDENCE CONTRADICTORY MEDICALLY, AND IMPARTIAL PHYSICIAN CALLED UPON TO FILE A REPORT. FINDING BASED UPON THIS REPORT. COMMITTEE'S DECISION SUSTAINED ON REVIEW.

The employee was injured while working at a wool dye tub in the factory of S. Slater & Sons, Incorporated, the wheel of a large truck loaded with cloth passing over the instep of his right foot. The attending physician testified that he found no signs of fracture, but later another physician was called into the case and a fracture of the fifth metatarsal bone was found. In view of the conflicting evidence an impartial physician was named, and his report indicated that there was a fracture, that the treatment was not adequate, and that "the general crush which the foot received might be quite enough to incapacitate this man from labor for twelve weeks."

*Held*, that the employee was entitled to compensation in accordance with the report of the impartial physician.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jacob Hawosz v. Frankfort General Insurance Company, this being case No. 110 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney of the Industrial Accident Board, chairman, Joseph A. Love, Esq., representing the employee, and Edward H. Hughes, representing the insurer, being duly sworn, heard the parties and their witnesses at the Selectmen's Room, Town Building, High Street, Webster, Mass., on Friday, March 7, at 12 m.

The committee finds that Jacob Hawosz, employed by S. Slater & Sons, Incorporated, of Webster, whose average weekly wage is \$9.20, was injured on Dec. 5, 1912, while working at a

wool dye tub in the above factory, by the wheel of a large truck loaded with cloth, which ran over the instep of his right foot while being pushed along by men.

After his injury Hawosz walked to the office of Dr. George C. Littlefield. Dr. Littlefield testified that he found the foot slightly red and swollen, that he examined for fracture and found absolutely no signs of fracture, that he offered to take the man home in his auto, but Hawosz refused, saying he would walk home, which he did. He saw the injured man at his own house during the following two weeks, and advised him to keep the foot elevated constantly and to refrain from walking on it. About two weeks after the injury, the 18th, he ceased calling on him. At that time there was no discoloration of the foot, and very slight swelling, and Dr. Littlefield strapped the foot up tight with adhesive plaster which Hawosz immediately removed and went back to work on the Monday following. In Dr. Littlefield's opinion Hawosz was able to go back to work about that time.

Dr. Joseph N. Roy, a practicing physician of Webster, said that he was first called to treat the injured employee, Hawosz, sometime during the week of the 15th of January. He saw him in his office on Main Street, and on examination he found the right foot swelled up a great deal, the skin somewhat broken on the surface, and the foot somewhat deformed. He tried to make the injured employee walk about, and he could not stand on the foot, could not put it straight on the floor, or walk very steady on it. He told Hawosz to put hot applications on the foot and report again, and advised him, after the injured employee had told him his story, that the best thing to do would be to have an X-ray picture taken of the foot. For this purpose he sent him to Dr. Philip H. Cook of the Worcester City Hospital.

Dr. Cook's report to Dr. Roy stated that the plate taken of Hawosz's foot shows a probable old fracture of the fifth metatarsal bone. This old fracture, in Dr. Roy's opinion, had reference to the injury on December 5. Dr. Roy further testified that he saw Hawosz off and on since the 28th of January about twice a week. In his opinion Hawosz could not have worked since that time, and should not work, because the foot

would swell in the afternoon; it seemed about normal in the morning. Up to the time he went to work on Monday, March 3, he did not think Hawosz should have been at work, and, in his judgment, he did not think he should be working now. He advised him to try to work and see what it would do. When he told Hawosz to try to work he went willingly. The only treatment he gave was rest and hot applications.

The injured employee testified that he did not do anything that the doctor told him not to do. When he went back to work for three days in December, the reason he left off was because he could not work any longer. He stopped working because he could not stand on one foot, and both feet hurt him because he kept all the weight on one foot while saving the other. The injured foot never ceased to pain him, always pained him, with a pain like a pleurisy pain, and it pained him to-day. The injured employee removed his shoe.

Dr. Littlefield, recalled, said there was a slight swelling over the fifth metatarsal bone, but it was not such as to prevent him from working, and, in his opinion, he could have worked since the 18th of December; after viewing the foot he described its present condition as "some fusiform swelling of the fifth metatarsal bone." He did not know, when he saw the injured employee in the two weeks after the accident on December 5, that there had been a fracture. He saw no signs of this, and now that he knew there was a fracture he saw no reason for Hawosz not being able to go to work two weeks after the accident. The fracture could only be detected by an X-ray; it was simply a curiosity where there was a fracture of the bone proper without a rupture of the periosteum, as in this case.

Mr. M. O. Kane, one of the Overseers of the Poor of the town of Dudley, Mass., testified that the injured employee had a settlement in Dudley although he lived in Webster, and that he was being helped by the poor department of the town of Dudley to the extent of \$2 a week.

In view of the conflicting testimony the arbitrators decided to submit all the testimony in the case to an expert impartial surgeon for his opinion, and for this purpose selected Dr. L. R. G. Crandon, 366 Commonwealth Avenue, Boston, and on March 13 received from Dr. Crandon the following report:—

MARCH 13, 1913.

Mr. EDWARD F. MCSWEENEY, *Massachusetts Industrial Accident Board,  
Pemberton Building, Boston, Mass.*

DEAR Mr. MCSWEENEY: — I have received your letter and the records in the case of Jacob Hawosz against S. Slater & Sons, Incorporated, of Webster, Mass.

The following conclusions seem to be warrantable: —

1. Hawosz received a subperiosteal fracture of the right fifth metatarsal bone and a general contusion of the foot.

2. The fracture was not recognized by Dr. Littlefield.

3. The foot was not treated as a fracture should be, namely, with splint. Adhesive plaster is not adequate treatment.

4. If the fracture had been properly treated and the man is one who would obey orders as to treatment, five weeks should make him well enough to work, namely, four weeks with splint and one week to learn to walk.

5. Since Hawosz was not properly treated, such a fracture probably would be slower in healing, certainly would be painful, and certainly would increase the length of disability.

6. I believe the general crush which the foot received might be quite enough to incapacitate this man for labor for twelve weeks. This is borne out by the afternoon swelling.

7. I believe the man is not exaggerating his disability.

8. Here, then, is a man with crush and fracture, inadequately treated, who, nevertheless, presents a claim which would not be too big even though he had been properly treated. The cut in expense, if any, should be made on the first doctor's bill.

Very truly yours,

L. R. G. CRANDON.

The committee finds that the employee, Jacob Hawosz on Dec. 5, 1912, received an injury arising out of his employment, which incapacitated him until March 3, 1913, and that he is entitled to ten weeks' compensation, at the rate of \$4.60 a week, half his average weekly wages, during this period, or a total of \$46.

EDW. F. MCSWEENEY.

JOSEPH A. LOVE.

EDWARD H. HUGHES.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, April 1, 1913, at 2 o'clock, and affirms and adopts the findings of the committee of arbitration, except as hereinafter stated.

The Board further finds that the employee was incapacitated for work as a result of his injury from Dec. 5, 1912, to March 3, 1913, with the exception of four days from Dec. 23 to Dec. 27, 1912, inclusive, and that he is entitled to the payment of one-half his average weekly wages of \$9.20, that is, to the payment of \$4.60 a week for a period of ten weeks, a total of \$46.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWENEY.  
JOSEPH A. PARKS.

CASE No. 113.

JAMES J. KEANE, *Employee.*

MASSACHUSETTS GENERAL HOSPITAL, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

CLAIM OF EMPLOYEE THAT HE WAS ENTITLED TO DOUBLE COMPENSATION BECAUSE OF THE SERIOUS AND WILLFUL MISCONDUCT OF THE EMPLOYER NOT SUPPORTED BY THE EVIDENCE. COMPENSATION DUE FOR THE INCAPACITY FOR WORK RESULTING FROM INJURY.

The employee was employed as a coal passer, and while using a power-picking machine received burns of the first and second degree on both arms, neck and face by reason of being unable to escape from the room in which he was working after fire had broken out. He claimed that he was injured by reason of the serious and willful misconduct of the engineer, who was exercising powers of superintendence at the time of the injury. The committee of arbitration dismissed the claim when it became evident that there was no foundation for it and heard the evidence regarding his incapacity for work. An impartial physician was appointed to examine and ascertain when the employee's in-

capacity for work ceased, and reported that at the time of the hearing he was fully able to resume work.

*Held*, that there was no serious and willful misconduct on the part of the employer and that compensation was due during incapacity for work, in accordance with the report of the impartial physician.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James J. Keane v. Employers' Liability Assurance Corporation, Ltd., this being case No. 113 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, William S. McCallum, Esq., representing the employee, and John G. Brackett, Esq., representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Saturday, April 5, 1913, at 10 A.M.

The evidence showed that the injured man was employed by the Massachusetts General Hospital as a coal passer. On Dec. 28, 1912, while using a power-picking machine, a fire started in the room where he was working. Before he could make his escape from the room he sustained burns of the first and second degree on both arms, neck and face. The case went to arbitration on the claim of the employee under section 3, Part II. of the Workmen's Compensation Act, that he was injured by reason of the serious and willful misconduct of Edwin C. Currier, the engineer at the Massachusetts General Hospital, who was exercising power of superintendence at the time of the injury. Upon the evidence submitted, and after hearing two witnesses in rebuttal, with others still to be heard from, the committee decided there was no evidence of serious and willful misconduct.

The other matters in dispute were the average weekly wage and time when disability ended. The employee claimed to have received \$40 per month, and according to the pay roll, as submitted by Mr. Edwin C. Currier, the engineer, he received \$25 a month and board. Mr. Parks, chairman of the arbitration committee, went to the Massachusetts General Hospital, to-

gether with Keane, and interviewed the paymaster and saw the pay roll there. Mr. Parks found that Keane had received the sum of \$22.58 during the last month of his employment at the hospital, being three days short of a month, showing conclusively that his wages were \$25 a month and board.

Francis D. Donoghue, M.D., appointed under section 8, Part III. of the Workmen's Compensation Act, made a report, in part as follows:—

A more or less sensitive scar about 4 by 2 inches over and above the tip of the right elbow. Does not interfere with any of the motions of the arm and is not so sensitive as to interfere with work. He has another small sensitive scar at the back of the right wrist. He is rather nervous, but I see no reason why he would not be better off at work at the present time, and he is entirely able to do the ordinary work of a fireman. It is possible that he may have been able to do it for the last week or two, but it is impossible to say accurately. He certainly is at this time, and should not be entitled to further disability payments.

The committee finds on all the facts that there was no serious and willful misconduct on the part of any one intrusted with duties of superintendence, or on the part of any other person; that the average weekly wage is \$10.39 per week, and that he is entitled to \$5.20 per week (one-half his average weekly wage) from the fifteenth day after the injury up to and including March 29, 1913, at which time the committee finds his incapacity for work ended.

JOSEPH A. PARKS.

JOHN G. BRACKETT.

WM. SHAW MCCALLUM.

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CASE No. 115.

JOSEPH BARRETT, *Employee.*

WILLIAM GATELY, *Employer.*

MARYLAND CASUALTY COMPANY, *Insurer.*

HEMORRHAGE OF THE LUNGS FOLLOWING INJURY. CLAIM  
WITHDRAWN AND AGREEMENT REACHED AS TO COMPEN-  
SATION DUE UNDER THE ACT BETWEEN THE PARTIES.

The employee was injured by falling from a hanging ladder while engaged at his trade as a painter, sustaining injuries to his right leg, chest, back and neck and also receiving a shock to his nervous system. He remained away from work

three weeks and two days, remaining about five weeks, when he was taken sick with a hemorrhage of the lungs, not being able to work since. The insurer claimed that his illness was not due to the injury, and while the committee had the matter under advisement the parties reached an agreement. *Held*, that the employee is entitled to compensation in accordance with the agreement entered into by the parties.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Barrett v. Maryland Casualty Company, this being case No. 115 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Dr. J. D. R. Woodworth, Jamaica Plain, Mass., representing the employee, and Walter Haliburton, Esq., of 18 Tremont Street, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Thursday, May 8, 1913, at 10 A.M.

Joseph Barrett, — aged twenty, occupation, painter (outside work with inside work), a time worker, average weekly earnings, \$17.60, employed by William Gately, 820 Parker Street, Roxbury, Mass., insured by Maryland Casualty Company, — on Friday, Sept. 13, 1912, at 11.30 A.M., was injured by falling from a hanging ladder, 30 feet high, sustaining injuries to his right leg and cuts on his chest, back and neck and general shock. He remained away from work three weeks and two days, \$11.32 being paid by the Maryland Casualty Company as disability payment for one week and two days, as provided in the Workmen's Compensation Act. Barrett returned to his regular work, at which he continued until the Monday before Thanksgiving, when he was taken sick with a hemorrhage of the lungs, and has not since been able to work. The question at issue in this case is whether or not the disability from which Barrett is now suffering arose out of and in the course of his employment following the injury on Sept. 13, 1912.

The arbitrators adjourned the first hearing, to give consideration to this phase of the question by subsequent investigation. On May 17 the arbitrators were notified that the case



had been satisfactorily adjusted by both parties, the injured man being entitled, in addition to payment already made of one-half his weekly wages, or \$8.80 per week, for one week and two days from the fourteenth day after the injury, a total of \$11.32, to payment for seventeen weeks, from Nov. 25, 1912, to March 24, 1913, inclusive, at one-half his average weekly wages, or \$8.80 per week, a total of \$149.60, making in all \$160.92, this sum being accepted by Joseph Barrett as full and complete payment for the disability resulting from his injury on Sept. 13, 1912.

The arbitrators approved this agreement and find that Barrett is entitled, in addition to the \$11.32 which he has been paid by the insurance company, to seventeen weeks' disability payment, at one-half his average weekly wage of \$17.60 a week, or \$8.80 per week, from Nov. 25, 1912, to March 24, 1913, — \$149.60, or a total of \$160.92.

EDW. F. MCSWEENEY.

WALTER S. HALIBURTON.

JOHN D. R. WOODWORTH.

CASE No. 117.

WILLIAM CURRAN, *Employee.*

J. P. O'RIORDAN, *Employer.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer.*

EMPLOYEE, PREVIOUSLY INCAPACITATED AND RECEIVING COMPENSATION FOR THIS INCAPACITY, FOUND NOT TO BE ENTITLED TO FURTHER COMPENSATION. MEDICAL TESTIMONY DOES NOT SUPPORT HIS CLAIM.

The employee fell from the seat of the wagon upon which he was employed, the fall not being a serious one, and the employee being able to get to the seat of his wagon unassisted. He received compensation for incapacity up to and including Nov. 1, 1912, the injury occurring on Aug. 14, 1912. The medical evidence indicated that there was no connection between his condition at the time of the hearing and the injury previously sustained, his present incapacity being due to chronic rheumatism and an old rectal trouble.

*Held*, that the employee was not entitled to further compensation.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments

thereto, having investigated the claim of William Curran *v.* Fidelity and Deposit Company of Maryland, this being case No. 117 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Edward W. Foye, representing the employee, and John A. Keefe, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Friday, March 28, 1913, at 10 A.M.

The injured man was employed as a teamster by J. P. O'Riordan in the night time. While in the course of his employment on Aug. 14, 1912, he was thrown from his wagon and claims to be still suffering from the injury which he sustained at that time.

The evidence tended to show that Curran had not been thrown heavily, and that he was able to get to the seat of his wagon unassisted. He continued working for a week or more, according to his own testimony, and felt no particular discomfort. He claims to have told Mr. Berc, the foreman at the Winter Street end, that he had been injured. Mr. Berc could not recollect this, as he had left for his vacation soon afterwards, Curran made no further complaint about the accident until along in the early part of November. Then he made a claim on the insurance company who had him examined by Dr. Mackie, who found that he was suffering from an old injury which he sustained in an accident on the Boston Elevated, as well as from an old rectal trouble and chronic rheumatism, the latter being confirmed by Dr. Patterson who had treated him several years before.

Dr. Mackie testified that, while Curran was in poor physical condition, he saw no connection between this condition and the accident which he sustained on August 14. There was evidence given by fellow workmen that he had used a cane previous to the injury of August 14, also that he limped and was considered a workman who was not fully able to perform his duties. It was also shown that during his entire incapacity he had gone to a physician only four or five times.

Taking this into consideration, and the many conflicting

statements made by the injured man himself, the committee finds that his present incapacity is not due to the injury sustained by him on August 14, and that he is entitled to compensation from August 28, the fifteenth day after the injury, to and including Nov. 1, 1912, at the rate of \$7 per week, half his average weekly wages, aggregating \$66, the employee having received this amount.

JOSEPH A. PARKS.  
EDWARD W. FOYE.  
JOHN A. KEEFE.

CASE No. 118.

SIDNEY L. PIGEON, ADMINISTRATOR OF THE ESTATE OF JOSEPH PIGEON, *Employee*.

VILA A. SHAW, *Employer*.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

EMPLOYEE, WHO HAD BEEN WORKING FOR CONTRACTEE DURING THE MORNING, RECEIVED AN INJURY DURING NOON HOUR, WHILE TAKING HORSES TO WATERING TROUGH. COMMITTEE FINDS THAT EMPLOYEE REMAINED SUBJECT TO CONTROL OF SUBSCRIBER AT TIME OF INJURY. WIDOW ENTITLED TO COMPENSATION. SUPREME JUDICIAL COURT AFFIRMS FINDINGS.

The employee was directed by the subscriber to take his horses and dump cart from the barn to the foreman of the cleaning department of the city of Springfield, to which city the team and driver had been let. This was one of two teams let by the subscriber to the city, one of which was driven from the stable to the place where the teams were to work by the foreman for the city and the other by the deceased. During the forenoon, deceased would drive one team, when loaded, to the dump, returning empty, the other wagon being loaded in his absence. Returning, he would change his seat and drive the other team to the dump. During the noon hour the deceased, according to custom, fed one pair of horses and the city foreman the other, and this custom was to be followed on the day of the employee's fatal injury. The employee was intrusted with the care and management of the horses and cart from the time he took them in the morning until he returned them to the barn at night, and it was a part of his duty to feed his horses at noon. While taking the horses home for the purpose of watering and feeding them they ran away, and the employee was thrown, receiving injuries which resulted fatally.

*Held*, that in the care and management of the horses and dump cart the employee did not become the servant of the city but remained subject to the control of his general employer. Therefore at the time of the injury he was the servant of the subscriber, and the dependent widow was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Decision.* — The Supreme Judicial Court affirms the findings of the Industrial Accident Board.

*Report of Committee of Arbitration.*

The arbitration committee appointed under section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Pigeon, employee, *v.* Vila A. Shaw, employer, Employers' Liability Assurance Corporation, Ltd., Insurer, this being case No. 118 on the files of the Industrial Accident Board, reports as follows: —

This case was heard by the committee at Springfield on March 21, 1913. The parties were represented by counsel. It was agreed that Pigeon, the claimant's intestate, was in the general employ of V. A. Shaw, as a dump-cart driver, and was on the pay roll of said Shaw at the time of the injury; that his average weekly wage was \$12; that he was injured at noon on Nov. 12, 1912, while driving the team of Shaw along State Street in Springfield at a point near St. James Avenue; that he died as a result of the injury; that he left a widow and two children under the age of eighteen, all of whom lived with him at the time of his death.

The matters in controversy were: —

*First.* — Was Pigeon an employee of Shaw at the time of the injury?

*Second.* — Did the injury which caused his death arise out of and in the course of his employment?

There was uncontradicted evidence that Pigeon was directed by Shaw to take the horses and dump cart from the Shaw barn to report to one McGuire, a foreman of the street-cleaning department of the city of Springfield, to which city Shaw had let the team with the driver for the purpose of carting street sweepings from whatever place the city squad was working to the dump; that on the morning of the day Pigeon was killed his employer, Shaw, let two teams to the city, one of which was driven from the stable to the place where the teams were to work by the foreman for the city, McGuire, and the other by deceased; that during the forenoon deceased would drive one

team when loaded to the dump, return empty, the other team being loaded in his absence; he would then change and drive the other team to the dump; that during the noon hour it was the custom for the deceased to feed the horses of one team and the city foreman the horses of the other team, and this custom was to be followed on noon of day deceased was killed; that Pigeon was intrusted by Shaw with the care and management of the horses and cart from the time he took them from the barn in the morning until he returned them to the barn at night, and it was his duty to feed the horses during the noon hour from feed bags provided for the purpose by Shaw and to water the horses whenever necessary; that in the work of carting the sweepings, Pigeon was under the control of the city foreman; that Pigeon took his dinner in a pail when he left home on the morning of the injury.

There was further evidence, contradictory as to the exact expressions of the conversations but substantially as follows: That at about five minutes before noon on the day of the injury Pigeon told McGuire, the foreman, that he was going to water the horses and to feed them and to get his own dinner; that he was going home to dinner; that Pigeon then drove down State Street in the direction of the nearest water trough for horses; that his home was in the same direction but some distance beyond the watering trough; and that the watering trough was on State Street in the most direct route to his own home; that on the way he told a fellow employee who was passing that he was going home to dinner and to help his wife fix a stovepipe; that when he had reached a point on State Street, about half way between the starting point and the watering trough, the horses ran away and Pigeon was thrown and received injuries from which he died.

The respondents requested the committee to rule as follows:—

*First.*— Upon the entire evidence the dependents of Joseph Pigeon are not entitled to recover under the Workingmen's Compensation Act.

*Second.*— Upon the entire evidence the employee was not at the time when he sustained the personal injury which resulted in his death an employee of Vila Shaw.

*Third.* — Upon the entire evidence the injury which resulted in the death of Joseph Pigeon was not a personal injury arising out of and in the course of his employment by Vila A. Shaw.

*Fourth.* — That part of the alleged declaration of the employee, testified to by McGuire; in which the former is said to have told McGuire shortly before his said injury that he intended to feed and water his horses, is incompetent as being hearsay, and does not come within the provisions of Revised Laws, chapter 175, section 66, and should therefore be disregarded in arriving at a determination of this case.

The committee refused all of the four requests.

The committee finds that in the care and management of the horses and dump cart, Pigeon did not become the servant of the city but remained subject to the control of his general employer Shaw, and that therefore at the time of the injury he was an employee of Vila A. Shaw.

The committee finds that Pigeon started to drive down State Street from the place where the city squad was working, with the intention of watering the horses at the nearest horse trough and then driving to his home to get his own dinner and to feed the horses; that the nearest horse trough was on State Street and in the direct route to his own home; that it was his duty to water the horses whenever necessary and to feed them during the noon hour; that he was driving by the shortest route to the nearest and most convenient horse trough and to his home, and had reached a point about half way from the point of starting to said trough, when he was injured by reason of the horses running away, and that therefore the injury which caused his death arose out of and in the course of his employment.

The committee finds that the respondents should pay to the administratrix for the benefit of the widow of Joseph Pigeon the sum of \$6 per week for three hundred weeks, beginning Nov. 12, 1912.

JAMES B. CARROLL.  
EDWARD HUTCHINGS.  
JOHN F. MALLEY.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, May 20, 1913, at 2.15 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds that Joseph Pigeon was in the employ of Vila A. Shaw as a dump-cart driver, and his average weekly wages were \$12 a week. That on the 12th of November, 1912, while driving the team of Shaw along State Street in Springfield, he was injured, and died as a result of said injuries.

Counsel for the insurer made the following request: "That part of the alleged declaration of the employee, testified to by McGuire, in which the former is said to have told McGuire shortly before his said injury that he intended to feed and water his horses, is incompetent as being hearsay, and does not come within the provisions of Revised Laws, chapter 175, section 66, and should therefore be disregarded in arriving at a determination of this case," which request was refused by the Industrial Accident Board, to which ruling the insurer objected and excepted.

The insurer then called said McGuire as a witness, and he testified substantially as follows: that Mr. Pigeon lived on Woodworth Avenue which is west of the watering trough, and just before he left Orleans Street he told McGuire that he would have to go to water his horses and feed them. McGuire later stated that Pigeon wanted to take the team and go home to dinner, and on the way to dinner he would water the horses. He further said that the following statement was signed by him, but that he had not read same, and when it was read to him, he had paid no attention to it: —

*Statement of Peter McGuire.*

On Nov. 12, 1912, I had charge of a gang of street sweepers. At about 12 o'clock Mr. Pigeon asked permission to drive the cart home so that he could have his dinner at home. I gave Pigeon permission to drive the cart home.

PETER MCGUIRE.

McGuire stated that the watering trough was at the corner of State and Federal streets, and that it was about one-quarter of a mile from where they then were; it was the nearest watering trough in the vicinity, the next one being one-half mile away; that he got the horses and wagon at Mr. Shaw's place on Daws Street, and that Pigeon drove one team while he drove the other, Pigeon substituting for Mr. McLaughlin who was sick; that the custom was to feed the horses right where they stopped at noon, and to water them at the nearest watering trough; that even if he had his dinner with him, he would have been in the place where the accident occurred, at the time it occurred, and that he was killed before he arrived at the watering trough; that it was a regular part of his duties to water the horses at this time.

He testified that the statement which he signed was true except that it should have included that Pigeon was going to water the horses.

Mr. Goddard testified as follows: that he was not in the barn when Mr. Shaw gave orders about watering the horses, and did not hear him give orders to his men to be sure and water the horses before they fed them; that he was in the employ of Mr. Shaw last spring for a while, but did not keep track of the exact time. He had his own team, and never drove Mr. Shaw's team. He also stated that he met Pigeon on the road, and Pigeon said he was going home to have his dinner, and would also set up a stovepipe for his wife.

Mr. Shaw testified as follows: that the assistant superintendent of streets came to his place and wanted to know if he could put a pair of single carts on to clean the streets, and Mr. Shaw said he would furnish two teams and one driver; that the men who would take the teams away from the place were Mr. McGuire and Mr. McLaughlin, but Mr. Pigeon was taking Mr. McLaughlin's place at the time of the accident; that he gave the men no instructions, the city's foreman doing that, while he merely furnished the teams; that he never gave Pigeon or any of the men permission to take the team and go to dinner; that he saw the team after the accident and Pigeon's dinner pail was in it, but the feed bags were not; that Pigeon worked for him between two or three weeks, painting and doing



odd jobs about the place, and on Monday morning, the day before the accident, he told Pigeon to take the place of McLaughlin who was sick, but did not tell him to take the bay horse; that he did not tell Wilkins to water the horse before eating, but told him not to give it well water, but rather let it go dry; that he did not tell the men to see that the horses were watered before being fed; that Pigeon had the care of the horse from the time he took it from the barn until he brought it back at night.

Mr. Wilkins testified as follows: that he was at the barn on Monday morning, the day before Pigeon was killed, and that Mr. Shaw told Pigeon to be sure and give the horse a drink before feed at noon.

Shaw further testified that the horse Pigeon drove was not a nervous horse; that it was sixteen years old, and that he had owned it for eight years. It had been driven by a number of different men and had never run away or done any damage. He stated that the horse might sheer out when he saw an automobile, but any horse would do that.

The Industrial Accident Board finds that Pigeon did not become the servant of the city of Springfield in the management and control of the horse and dump cart, but in this respect the man is subject to the control of his employer Shaw, and therefore at the time of the injury he was an employee of Vila A. Shaw; that he started to drive down State Street to the west from the place where the city squad was working, with the intention of watering the horses at the nearest watering trough, and then driving further on to his home to get his own dinner and to feed the horses; that the nearest watering trough was on State Street at the corner of Federal, and in the direct route to his own home; that it was his duty to water the horses whenever necessary, and to feed them during the noon hour; that he was driving by the shortest route to the nearest and most convenient watering trough, thence intending to go to his own home, and had reached the point about half way between the point of his starting and the watering trough, when he was injured by reason of the horses running away; and that the injury which caused his death arose out of and in the course of his employment.

The Industrial Accident Board, in affirming and adopting the findings of the committee of arbitration, finds that the respondents should pay to the administratrix of Joseph Pigeon for the benefit of his widow the sum of \$6 per week for three hundred weeks, beginning Nov. 12, 1912.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.  
DAVID T. DICKINSON.

*Decree of Supreme Judicial Court on Appeal.*

RUGG, C.J. This is a proceeding under the Workmen's Compensation Act, St. 1911, c. 751.

1. The Industrial Accident Board have found that Joseph Pigeon came to his death through an injury arising out of and in the course of his employment by Vila A. Shaw. The first point argued is whether the finding that he was in the employ of Shaw at the time of the injury was warranted by the evidence. The finding stands upon the same footing as the finding of a judge or as a verdict of a jury. It is not to be set aside if there is any evidence upon which it can rest.

There was evidence tending to show that the decedent was in the general employ of Shaw, who on the day in question had sent him with a horse and cart to work for the city of Springfield. Another horse and cart were sent, but without a driver. These carts were used to clean sweepings from the streets. It was the course of work for the decedent to drive one horse and cart to a dump while the other cart was being loaded, so that he was driving one or the other all the time. His general instructions as to the place and kind of work to be done were given by the superintendent of the city of Springfield. But it was the deceased's duty, under his general employment by Shaw (as testified to by Shaw), "to water the horse when he had a chance to water him; it was his duty to water the horse when he had a chance," and that he "had the care of the horse from the time he took it from the barn until he brought it back at night." Just before 12 o'clock on the day of the injury the deceased told the man in charge of the street sweepers

in substance that he would take one team and go home to dinner, and on the way to dinner would water the horse. The decedent's home was in the direction of the nearest watering trough, but a considerable distance beyond it. He drove away in that direction, but before reaching the watering trough was fatally injured by the running away of the horse. It is not contended that the deceased had a right to use the horse to go home to his dinner. He carried grain for the horses, and it was his duty to feed them during the noon cessation of work. This evidence warranted a finding that Shaw did not lend the decedent absolutely and unqualifiedly into the service of the city of Springfield, but that he retained the general direction of his conduct except in so far as it was surrendered to the city, and that this retention of control included the care of the horses, at least to the extent of seeing that they were watered. It was said by Knowlton, C.J., in *Shepard v. Jacobs*, 204 Mass. 100, 112: "In determining whether, in a particular act, he is the servant of his original master or of the person to whom he has been furnished, the general test is whether the act is done in business of which the person is in control as a proprietor, so that he can at any time stop it or continue it, and determine the way in which it shall be done; not merely in reference to the result to be reached, but in reference to the method of reaching the result." Applying this to the evidence at bar, the finding was warranted that so far as the watering of the horse was concerned the decedent was acting as the agent of his general employer and not of the city of Springfield. It was in the performance of his general duty and not in the transportation of material, as to which alone he worked for the city and was subject to its order. It commonly has been held in cases where a horse and driver have been let by a general employer into the service of another that the driver is subject to the control and therefore is the agent of his general employer as to the care and management of the horse and vehicle. (See *Shepard v. Jacobs*, 204 Mass. 110 and cases cited at 112; *Hussey v. Franey*, 205 Mass. 413; *Corliss v. Keown*, 207 Mass. 149; *Waldock v. Winfield*, 1901 2 K. B. 596; *Hunt v. New York, New Haven & Hartford Railroad*, 212 Mass. 102, 107.) Cases relied on by the insurance company, like *Hasty v. Sears*,

157 Mass. 123, are distinguishable. In that class of cases no property of the general employer was intrusted to the agent to be used in the service of the new employer.

2. The next point argued is that the evidence did not warrant a finding that the injury resulting in the decedent's death arose out of and in the course of his employment by Shaw. As has been pointed out, there was evidence to the effect that it was the decedent's duty to water the horse, and that he was on his way to perform that duty at the time of the injury. Though he may have had at the same time the purpose to do something else not within the scope of his employment, after watering the horse, that fact does not prevent the service actually rendered at the moment from being in the course of his employment. His custody of the horse for the purpose of relieving his thirst was in the performance of the business of his general employer. His service in doing this was not destroyed by his unexecuted intention to abandon his master's business after performing this duty, and to take the horse for his own convenience on a journey of his own. This branch of the case is covered by *Hays v. Wilkins*, 194 Mass. 223, and *Reynolds v. Denholm*, 213 Mass. 576. (See *Fleischner v. Durgin*, 207 Mass. 435.)

3. A question is raised as to the admissibility of evidence received at the hearing. Although a proceeding under the Workmen's Compensation Act is not an equity cause, the practice, speaking broadly, follows that prevailing in equity and not that in law. (Gould's case, *ante*.)

It is plain from sections 7 and 10, Part III. of the act, as amended by St. 1912, c. 571, §§ 12 and 13, that the committee of arbitration shall make rulings of law, and that such rulings of law shall be subject to review by the Industrial Accident Board, whose decisions in turn shall be subject to review by the court; and that after the entry of a decree in the Superior Court, all proceedings shall be the same as though rendered "in a suit duly held and determined by said court," except that there shall be no appeal upon findings of fact (Part III., section 11, of the act). In this respect the procedure marked out by the act more nearly conforms to the practice where the hearing is before the court than to that where it is by a master.

It was said in *Knowles v. Knowles*, 205 Mass. 290, at 292, that "It is the general rule that objections to rulings made by a single judge at the hearing of an equity cause upon the admissibility of evidence can be brought before this court only by exceptions, and not by appeal with a report of the facts found or of the evidence." (See, however, now, St. 1913, c. 716, § 4.) The practice in this Commonwealth, as stated in *Knowles v. Knowles*, differs from that generally prevailing in Courts of Chancery, the historical reasons for which are to be found in *Dorr v. Tremont National Bank*, 128 Mass. 349. The general practice in equity outside this Commonwealth (where there has been no issue framed for a jury) is to consider on appeal questions properly raised as to the admission or exclusion of evidence. But rehearings are not granted for such errors unless it appears that substantial justice requires it. (3 Daniell Ch. Practice (6th Am. Ed.), 1504-5; *MacCabe v. Hussey*, 5 Bligh. N. S. 715, 729; *Wilson v. Hoss*, 131 U. S. Appendix ccx.; *Ruckman v. Cory*, 129 U. S. 387, 390; *Giles v. Hodge*, 74 Wis. 360, 365; *Kleimann v. Gieselmann*, 114 Mo. 437, 433; *Sawyer v. Campbell*, 130 Ill. 186, 204.) As exceptions do not lie under the Workmen's Compensation Act, and the only way to bring questions of law to this court is by appeal, it follows that the general equity rule as to consideration of questions of evidence raised at a hearing before the chancellor ought to be followed. Such questions seasonably presented upon the record will be considered, but a decree will not be reversed for error in this respect unless the substantial rights of the parties appear to have been affected.

The question of evidence is this: A witness was permitted to testify to the declaration of the deceased employee, made just before his injury, in substance that he intended to feed and water his horse. The insurer objected that this declaration was incompetent under R. L., c. 175, § 66.

That section provides that "a declaration of a deceased person shall not be inadmissible in evidence as hearsay if the court finds that it was made in good faith before the commencement of the action and upon the personal knowledge of the declarant." The argument is that this section renders such evidence competent only at a trial before a "court,"

and that neither the committee of arbitration nor the Industrial Accident Board is a "court." Plainly neither is a court in the strict meaning of the word. (See Opinion of Justices, 209 Mass. 706, 612.) The members are not "judicial officers" within the construction. (Part II., chap. III., Art. I.) But they are given authority to summon witnesses, administer oaths, hold hearings, take testimony, examine evidence, make rulings of law and findings of fact, and render decisions. (See Part III. of the act.) Their decisions may be enforced by appropriate proceedings in courts. The power to take testimony and make rulings of law, which are subject to review by the judicial department of the government, goes far to indicate that in performing those functions they are to be guided and controlled by the same general principles which would govern judicial officers in discharging the same duties. The Workmen's Compensation Act in its practical operation affects large numbers of people. Its declared purpose is the humane one of preventing industrial accidents and providing payments for employees injured in the course of employment. It is substitutional in character for the common law remedy for a class of injuries formerly adjusted by actions at law. The word "court" has been used in statutes with a broader significance than including simply judicial officers. (See *Aldrich v. Aldrich*, 8 Met. 102, 106.) It may be given a signification liberal enough to include the committee of arbitration and Industrial Accident Board as instituted by the act, and under all the circumstances should be given such construction.

It is further contended that that section of the statute is inapplicable because a proceeding under the Workmen's Compensation Act is not an "action," and hence the declaration of the deceased cannot have been made "before the commencement of the action." Here again the definition urged is too narrow. Action is here used in its comprehensive sense as meaning the pursuit of a right in a court of justice without regard to the form of procedure. (*Boston v. Turner*, 201 Mass. 190, 196.) A proceeding under the act contemplates ultimate enforcement in a judicial court, and a declaration made before the institution of proceedings under the act is made before the commencement of the action. The language in *Dickinson v.*

Boston, 188 Mass. 595, at 597, which seems to imply a restricted meaning, and which is relied on by the insurer, was used in a different connection and with reference to the facts then under consideration.

These considerations lead to the conclusion that R. L., c. 175, § 66, applies to hearings under the Workmen's Compensation Act. Hence there was no error in receiving evidence as to declarations of the deceased employee. As there is no provision under the act for exceptions, the order must be exceptions dismissed.

*Decree affirmed.*

CASE No. 119.

WILL S. CLARK, *Employee.*

BAY STATE STAMPING COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF PARTIAL INCAPACITY.

The employee claimed compensation on account of partial incapacity for work as a result of the injury, and the evidence indicated that the employee was in fact partially incapacitated.

*Held*, that the employee was entitled to compensation in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Will S. Clark v. American Mutual Liability Insurance Company, this being case No. 119 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, chairman, representing the Industrial Accident Board, Peter T. Dolan of Worcester, Mass., representing the employee, and William H. Rose, M.D., of Worcester, Mass., representing the insurer, heard the parties and their witnesses on Wednesday, Feb. 26, 1913, at 10.30 A.M., in the Common Council Chamber, City Hall, Worcester, Mass.

Will S. Clark, the injured employee, met with an injury which arose out of and in the course of his employment on Saturday morning, Aug. 10, 1912, at about 8.45 o'clock, his finger having

been caught inside the ferrule of a die press upon which he was at work, incapacitating him for the performance of his work.

An agreement in regard to compensation had been filed and approved by the Board which provided for the payment of compensation under section 11, Part II., for the loss of one phalange; that is, to the payment of twelve additional weeks at \$7.50 and to compensation on account of total incapacity under section 10, Part II. of the act, at the rate of \$7.50 a week, beginning on the fifteenth day after the injury, Aug. 24, 1913.

Compensation was suspended, the insurer claiming that incapacity had ceased. The evidence indicated, however, that the employee had resumed work on September 16, receiving an average weekly wage of \$8.63, which was continued until the week of November 4, at which time his wages were increased to \$11.80.

The committee of arbitration, therefore, finds that there is due the employee one day's compensation on account of total incapacity, \$1.07; seven weeks' compensation on account of partial incapacity, at \$2.68 a week, \$18.76; eight and one-seventh weeks' compensation on account of partial incapacity, at \$1.60 a week, \$13.03, making a total due the employee of \$32.86; all incapacity on account of the injury ceasing Jan. 1, 1913.

DUDLEY M. HOLMAN.

PETER T. DOLAN.

WILLIAM H. ROSE, M.D.

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CASE No. 121.

BARNARD PORTNOY, *Employee.*

STANDARD GROCERY COMPANY, *Employer.*

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

FAILURE TO REPORT INJURY. COMMITTEE CALLS UPON IMPARTIAL EXPERTS TO ASSIST IN DETERMINING CAUSE OF INCAPACITY. EMPLOYEE AWARDED COMPENSATION FOR EXISTING INCAPACITY.

The employee had failed to report the injury until several months after it had been received, and there was conflicting testimony as to the ability of the employee to earn wages. The matter was referred to an impartial medical expert by the



committee of arbitration, and the report stated that the employee was suffering from a rupture of a tendon which caused incapacity for work.  
*Held*, that the employee was entitled to compensation in accordance with the provisions of the act.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Barnard Portnoy v. Fidelity and Casualty Company of New York, this being case No. 121 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, Robert Gallagher, representing the employee, and Horace G. Pender, representing the insurer, heard the parties and their witnesses in the Hearing Room, Industrial Accident Board, 201 Pemberton Building, Boston, Mass., on Thursday, March 6, 1913, at 9.15 A.M.

The employee, Barnard Portnoy, had been employed for the last twelve years by the Standard Grocery Company, working about the stock room, with wages at \$14 per week. The Standard Grocery Company was insured in the Fidelity and Casualty Company.

Portnoy claimed that on July 3, 1912, while he was working in the stock room alone, some cases of salmon, weighing from 40 to 50 pounds apiece, fell upon his shoulder. He claimed to have related the incident to a fellow employee who worked with him, one Jacob Toltz, but paid little attention otherwise to it, thinking it but a blow on the shoulder. He worked until the 16th of July, and on the 17th of July he went to the Massachusetts General Hospital, and from that time he has not been able to work. He went back to the store and instructed some one else in his work, and was paid for five weeks after the accident. He has since been treated at the Massachusetts General Hospital, the City Hospital, the Carney Hospital and by various private doctors.

The insurance company denied that the accident occurred. Two fellow employees, Jacob Toltz and Harry Greenburg, testified that they knew nothing of the accident; that Portnoy had worked steadily until the middle of July, and had then left his

employment, stating that he was sick. His employer, Leo S. Jolles, one of the partners in the Standard Grocery Company, testified that Portnoy had told him in May or June that something was the matter with his arm, but did not say which arm.

Various diagnoses have been made of the trouble from which Portnoy is suffering. The City Hospital called it occupational neurosis; the Carney Hospital, subdeltoid versitis; The Massachusetts General Hospital record said, "diagnosis deferred."

Dr. R. C. Glynn of Brighton Avenue examined the employee twice for the insurance company, first on January 3 and second on February 4, and found a slight weakness of the shoulder of the right arm. In Dr. Glynn's opinion he was able to work at the time of his first examination. On the second examination Dr. Glynn found little if any difference; there was no waste of the muscle in evidence on February 4, and no evidence that he could not work, except Portnoy's statement that he could not.

In view of the conflicting testimony, and by agreement between all parties concerned, Portnoy was referred on March 12 for examination to the Massachusetts General Hospital, which was given a copy of all the testimony in the case and requested to subject him to an expert examination to find and report whether the condition of his shoulder "is such that he cannot work, and if so, whether or not this condition was possible or probably due to an accident such as he alleges to have occurred."

On March 15 a report on this case was made by the Massachusetts General Hospital, signed by Dr. F. A. Washburn, resident physician, which stated:—

The surgeon reports that he is probably suffering from a rupture of a tendon (supras pinatus), and that he has recommended him for admission to the hospital for operation for repair of this tendon. It is the opinion of the surgeon that it is possible to cause a rupture to this tendon by an accident such as the patient alleges to have occurred.

On March 19 Mr. George W. Buck, chief examiner of the Fidelity and Casualty Company of New York, forwarded to the Board a signed agreement between the injured employee, Barnard Portnoy, and the Fidelity and Casualty Company, in which the company agrees to pay Portnoy \$5 a week from Aug.

15, 1912, to March 15, 1913, and \$7 per week thereafter, the employee agreeing to undergo whatever treatment may be necessary to effect a cure, which agreement has been approved.

EDW. F. MCSWEENEY.

ROBERT GALLAGHER.

HORACE G. PENDER.

CASE No. 124.

BARTOLO CICERO, *Employee.*

J. D. SHATTUCK, *Employer.*

UNITED STATES CASUALTY COMPANY, *Insurer.*

EMPLOYEE INCAPACITATED BY REASON OF INJURY TO EYE.  
ENTITLED TO COMPENSATION ON ACCOUNT OF INCAPACITY  
AND ADDITIONAL COMPENSATION FOR LOSS OF VISION.

This employee, while engaged in ramming dynamite into a hole with a stick, as is ordinarily done, received injuries to the face and eyes, which incapacitated him and reduced the vision in the right eye to  $1\frac{1}{2}$  of normal.

*Held*, that the employee is entitled to compensation on account of incapacity for work and to additional compensation for the loss of vision in the right eye.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Bartolo Cicero v. United States Casualty Company, this being case No. 124 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Ross E. Savage, representing the employee, and Charles M. Cram, Esq., representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Friday, May 2, 1913, at 2.30 P.M.

We find that Bartolo Cicero, whose address is Weymouth Camp No. 1, was employed by J. D. Shattuck of Quincy Avenue, East Braintree, Mass., as a member of the stone gang, which was his regular occupation; that he was a time worker and his average weekly earnings were \$12.68; that on the sixteenth day of October, 1912, at 5.16 P.M., while he was ram-

ming dynamite in a hole with a stick as is ordinarily done, there was an explosion and he received injuries to the face and to his eyes.

We find on the testimony of Dr. Jeremiah Corbett of Malden that Cicero, after the accident, had  $1\frac{4}{200}$  vision in the right eye, which was not improved with the help of glasses, due to scars in the front of the eyeball over the center of vision; that he had  $20/40$  in the left eye, which could not be improved on account of scars over the field of vision. This examination was made on February 11. On April 4, the time of his next examination, there was  $16/200$  vision in the right eye and  $20/40$  in the left. He does not think that there is any possibility of improving either eye, and he has made a very full examination. He thought that the employee could see to get around pretty well with the left eye and, understanding that his work had been shoveling in a trench, thought he might do rough work like that. He does not think it possible to improve the sight by further treatment. He judged from his examination that the right eye had not been reduced to less than  $1/10$  of normal vision before the accident.

We find that the accident arose out of and in the course of his employment; that Cicero is entitled to receive compensation for the permanent loss of the right eye, which is reduced to less than  $1/10$  of normal vision with glasses, and that he is entitled to the specific compensation of fifty weeks at one-half his average weekly wage, and that he is also entitled to compensation at the rate of one-half his average weekly wage, \$6.34, from the fifteenth day after the injury.

DUDLEY M. HOLMAN.  
CHARLES M. CRAM.  
ROSS E. SAVAGE.

CASE No. 126.

ALBERT E. SMITH, *Employee.*

BOSTON ELEVATED RAILWAY COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

WHOLLY DEPENDENT FOR SUPPORT UPON THE DECEASED EMPLOYEE. COMMITTEE FINDS THAT MOTHER WAS IN FACT WHOLLY DEPENDENT.

The employee was fatally injured while in the employ of the Boston Elevated Railway Company, the injury arising out of and in the course of his employment. The only question in dispute was whether the mother of the employee was wholly or partially dependent upon him for support. The testimony indicated that she had no other income at the time of his death, and that he sent her regularly \$5 a week, and frequently sent her larger sums. His average weekly wages were \$13.65.

*Held*, that the mother was wholly dependent upon the employee for support, and that she is entitled to a weekly payment of \$6.83 for a period of three hundred weeks from the date of the injury.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Albert E. Smith v. Massachusetts Employees Insurance Association, this being case No. 126 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Webster A. Chandler, Esq., of Boston, representing the employee, and John Clair Minot, representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Room 201, Pemberton Building, 12 Pemberton Square, Boston, Mass., on Monday, March 3, 1913, at 10 A.M.

It is agreed by all parties concerned that Albert E. Smith, employed by the Boston Elevated road, on an average weekly wage of \$13.65, died on Nov. 24, 1912, as a result of an injury

arising out of and in the course of his employment. The Boston Elevated road was insured in the Massachusetts Employees Insurance Association.

The question in dispute is whether Margaret Smith, mother of the deceased employee, who lives at 201 Pleasant Street, Halifax, N. S., was at the time of the injury wholly or partially dependent on the deceased.

From the testimony, it appears that the mother, Margaret Smith, a widow, had no other income at the time of the death of her son, Albert E. Smith, but \$5 a week, which money he sent her through the mail, so that she received it at Halifax each Tuesday morning. It was testified that there was always at least \$5 in the mail and occasionally something more. On New Year's before the last her son had sent her \$10 and last New Year's, \$15. The mother had no other means of support.

Up to eighteen months ago the mother had been able to work, but during this period was not able to earn anything because of her physical condition. She has a son living with her, thirty-six years of age, who was born helpless, and is paralyzed on one side; he is able to walk, but his hand and arm never grew and he has never earned a cent. She has had 14 children altogether, 6 of whom are living. Two of the married daughters, Mrs. Murray of Cambridge and Mrs. Black of Medford, were present at the hearing.

While the father of the deceased was living, more than forty years ago, he bought a house for \$2,000 on which \$500 had been paid, leaving a mortgage of \$1,500. Since the mother has been sick and unable to earn anything the interest becoming overdue the mortgage was foreclosed. A daughter, Mrs. McGraw, who lived in Halifax in this house with the mother for three years, had been paying \$5 a month, which was to help on the interest payments. Mrs. Smith testified that the owners of the house had allowed her (Mrs. Smith) to remain living in the house up to this time because of the death of her boy. It further appeared from the testimony that, during the strike on the Elevated road last year, the deceased being out of work was unable to send his mother \$5 a week, and therefore she had come to live with a daughter, Mrs. Annie

Black of 41 Joseph Street, Medford. When the son went back to work for the Elevated road, after the strike was ended, he had given his mother \$10 while she was still living with Mrs. Black, and \$10 more the morning she went away to return to her home in Halifax, which was nine weeks previous to the son's death. Mrs. Black testified that she knew her brother had planned to make a home for his mother in this vicinity, and to bring her here to live with him in May. Mrs. Maud Murray, another daughter, living at 35 Brookline Street, Cambridge, testified that her deceased brother had lived with her; that she had not charged him any board so that he might help his mother. She also knew that he had planned to make a home for the mother, and further knew that while he sent his mother \$5 regularly, one week he had sent her \$8.

*Held*, that the mother, Margaret Smith, was at the time of the injury wholly dependent on the deceased employee, Albert E. Smith, and in consequence is entitled to a weekly payment of \$6.83, equal to one-half his average weekly wage, for a period of three hundred weeks from the date of injury.

EDW. F. MCSWEENEY.

WEBSTER A. CHANDLER.

JOHN CLAIR MINOT.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, April 16, 1913, at 3 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds that Albert E. Smith received a personal injury arising out of and in the course of his employment, which afterwards resulted fatally, on Nov. 24, 1912.

The Board further finds that Margaret Smith, the mother of the said Albert E. Smith, was wholly dependent upon his earnings for support at the time of the injury, and that the said Margaret Smith is entitled to compensation based upon the average weekly wage of the said Albert E. Smith, which was

agreed to be \$13.65; that is, to the payment of a weekly compensation of \$6.83 a week for a period of three hundred weeks from the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No 127.

JOSEPH WOLYNSKI, *Employee*.  
JOSEPH MYERS, *Employer*.  
FRANKFORT GENERAL INSURANCE COMPANY, *Insurer*.

EMPLOYEE DECLINES TO ACCEPT WORK WHICH HE WAS ABLE TO PERFORM. ENTITLED TO PAYMENTS ON ACCOUNT OF PARTIAL INCAPACITY IN ACCORDANCE WITH HIS ABILITY TO EARN WAGES.

The sole question at issue in this case was whether the employee was entitled to weekly payments on account of total incapacity or for partial incapacity for work, the evidence indicating that he had declined to accept work which he was able to perform, the wages being \$10 a week. It was also in evidence that the position had been held open for a period of from six to eight weeks.

*Held*, that the employee was entitled to payments on account of partial incapacity in accordance with his ability to earn wages.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Wolynski v. Frankfort General Insurance Company, this being case No. 127 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of Fall River, chairman, William S. McCallum of Boston, representing the employee, and Horace G. Pender of Boston, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Monday, March 10, 1913, at 10 A.M.



It was agreed that Joseph Wolynski was injured Oct. 3, 1912, while in the employ of Joseph Myers, keeper of a sales stable at 103 Beverly Street, Boston. The injured employee was watering horses and fell over a swinging board which divides horses in double stalls, frightening one of the horses and receiving a kick in the face which resulted in the total loss of the sight in the left eye.

The parties disagreed as to the capacity of the employee for work, and evidence introduced proved that the employee had been offered work as night stable man at a weekly wage of \$10, his former average weekly wage having been \$15.

The insurer introduced evidence which showed that the employer made every effort to get Wolynski to return to work, notifying said insurer that a position was available and sending a fellow employee to see Wolynski and urge him to return.

The employee admitted having received an offer of employment, but claimed that his eye was so sore that he thought he could not perform any work at that time. The employer held the place open from six to eight weeks, but could not now offer such a position to the employee.

Dr. J. W. Seaver, physician for the insurance company, examined the employee Nov. 16, 1912, and found that the employee had been discharged from the hospital on October 25, that his eye had been removed, one tooth had been kicked out and two others had been loosened. He had been kicked on the left lower leg and showed a small scar. He could not find anything on the date of examination which would prevent him from working except the loss of his eye. The employee's health was apparently perfect, and he expressed the opinion that he could at that time have performed a certain amount of stable work.

The committee of arbitration finds that the employee was totally incapacitated for work for a period of eleven weeks from the date of the injury, and that he was entitled to reasonable hospital and medical services during the first two weeks after the injury, from October 3 to October 16, inclusive, and to compensation beginning on the fifteenth day after the injury, or from Oct. 17, 1912, to Dec. 20, 1912, inclusive.

The committee further finds that the employee was par-

tially incapacitated from Dec. 20, 1912, and is now partially incapacitated for work as a result of this injury, and that he is entitled to a weekly payment for said incapacity of \$2.50 a week dating from Dec. 20, 1912, and continuing until the measure of his partial incapacity is changed, but not for a greater period than three hundred weeks from the date of the injury. When the degree of partial incapacity is changed the employee shall be paid weekly compensation based upon half the difference between his average weekly wages at the time of his injury and the rate then earned by him.

The committee further finds that the employee is entitled to additional compensation under section 11, Part II., subsection (b), for the loss of the sight in the left eye to a weekly payment of \$7.50 per week for a period of fifty weeks from the date of the injury.

JOSEPH A. PARKS.

HORACE G. PENDER.

I cannot agree, in all, to the finding of the other two arbitrators who sat on this case, and wish my dissent from their findings to be registered in the following instances: —

1. The insurer did not introduce evidence that satisfied me, as one of the arbitrators, that he had made every effort to get Wolynski to return to work. Just the opposite; as in my opinion the fact that the insurer wanted Wolynski to return to work was not, as a matter of fact, brought directly to his (Wolynski's) attention.

2. I do not think that the employee admitted having received an offer of return of employment, and the only basis for holding that the employer held the place open for six or eight weeks was the testimony of a foreman of Myers who said he told some one else that Wolynski could come back. This was never brought home directly to Wolynski.

3. From my questioning of the doctor and the witnesses I felt and feel now that Wolynski was totally incapacitated until Jan. 15, 1913.

WM. SHAW MCCALLUM.

CASE No. 128.

COLIN ROSKILLY, *Employee*.

WILLIAM B. JOHNSON, *Employer*.

NEW ENGLAND CASUALTY COMPANY, *Insurer*.

EMPLOYEE FILES CLAIM FOR PAYMENT OF DENTAL BILL.  
MATTER SATISFACTORILY ADJUSTED BY AGREEMENT OF  
THE PARTIES.

The employee received an injury arising out of and in the course of his employment while holding a drill for a striker, receiving a blow in the face and mouth with a hammer, which resulted in a lacerated wound of the upper lip and displaced four teeth, one below and three above.

The parties came to an agreement, and the agreement was approved by the committee.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Colin Roskilly v. New England Casualty Company, this being case No. 128 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Ernest A. Thompson, Esq., of Boston, representing the insurer, and James T. Moriarty of Boston, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, on Friday, March 21, at 10 A.M.

The employee was injured while in the employ of William B. Johnson, 17 Malden Street, Boston. He was holding drill for a striker, and received a blow in the face and mouth with a hammer, resulting in a lacerated wound of the upper lip, displacing four teeth, one below and three above.

The case came before the committee of arbitration on the question of payment for the false teeth to replace the ones knocked out. After the hearing had been in progress a little while an agreement was reached satisfactory to both parties. The committee of arbitration sanctioned the agreement.

JOSEPH A. PARKS.

ERNEST A. THOMPSON.

JAMES T. MORIARTY.

CASE No. 129.

WILLIS C. SANDERSON, *Employee.*

N. S. BLACK, *Employer.*

GLOBE INDEMNITY COMPANY, *Insurer.*

**FATAL INJURY TO EMPLOYEE. FOUND UNCONSCIOUS ON ROAD  
WITH A DEPRESSION IN THE SKULL. INJURY AROSE OUT  
OF AND IN THE COURSE OF THE EMPLOYMENT.**

The employee, a plumber's assistant, left the shop of his employer at 1.30 o'clock on the afternoon of the injury in a wagon drawn by a horse, owned by his employer, to go from South Deerfield to the house of Thomas Fleming at Whately, Mass., a distance of about 4 miles, for the purpose of fixing a water pump. He left said Fleming's house at about 5 o'clock, and was last seen by Thomas Connelley, a carpenter, driving along the State highway, homeward bound. Five minutes later Connelley came upon his unconscious body lying in the roadway to the left of the wheel tracks, the horse and wagon being some distance away. Connelley called the employee by name, but other than a groan obtained no sign of recognition. He was taken to the hospital where a cut was noted on the employee's head, a contused surface surrounding the cut, black-and-blue marks being found on the back of his hand and shoulder, and a depression existing in the skull immediately under the contused surface. An operation was performed to relieve the pressure on the brain, but the employee died about 3 o'clock the next morning.

*Held*, that the injury arose out of and in the course of the employment.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Willis C. Sanderson *v.* Globe Indemnity Company, this being case No. 129 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, James B. Bridges, Esq., representing the employee, and William A. Davenport, Esq., representing the insurer, heard the parties and their witnesses in the Grand Jury Room, Court House, Greenfield, Mass., on Friday, February 21 and on Friday, Feb. 28, 1913.

The petitioners were represented by Frank J. Lawler, Esq., and the insurance company by James T. Connolly, Esq., assisted by Howard Sheffield, Esq.

We find, on the evidence submitted, that Willis C. Sanderson of South Deerfield was forty-seven years of age, married, and left at the date of his death three children under eighteen years of age; that he was a general workman, a plumber's assistant, employed by N. S. Black of Main Street, South Deerfield; that his average weekly wages were \$13.50 per week; that on Wednesday, the twenty-second day of January, 1913, he left the shop of his employer at 1.30 P.M., in a wagon drawn by a horse, owned by his employer, to go from South Deerfield to the house of Thomas Fleming at Whately, Mass., a distance of about 4 miles from the shop of his employer, for the purpose of fixing a water pump for said Fleming, a customer of his employer; that he left the house of said Fleming about 5 o'clock P.M., in said wagon drawn by said horse, to make his return trip to the shop of his employer; that he was seen by Thomas Connelley, a carpenter, as he (Sanderson) was returning from his work, driving along the State highway leading from Whately to South Deerfield, in a northerly direction, apparently in a normal condition; that five minutes later Connelley came upon his unconscious body lying in the roadway to the left of the wheel tracks; that his head was pointing south and his feet towards the north; that a blanket was found more nearly in the middle of the roadway, north of his feet; that Connelley saw the horse and wagon some distance away, jogging along up the road; that Connelley called Sanderson by name, obtaining no sign of recognition; that he then lifted his head and Sanderson groaned once; that Sanderson was lying on his right side, his right arm underneath him, and he partly rolled over when he groaned, Connelley testifying that when he lifted the man's head he expected that he was going to get right up; that Sanderson's eyes were partly opened; that he appeared to be unconscious; that about six or eight minutes later an automobile truck, belonging to the Greenfield Electric Light and Power Company, came along, and Connelley, with the assistance of some men in the truck, put Sanderson on the truck and took him to South Deerfield, where Dr. Henry A. Suitor made a slight examination of Sanderson and ordered him taken to the Greenfield Hospital, to which place he was taken in the same truck; that there was a

cut on Sanderson's head over the right eye, an inch or an inch and a half in length, extending into the hair on the front of the head, and at its deepest point extending through the scalp to the skull and causing a slight hemorrhage from the periosteum; that there was a contused surface around the cut for about 3 inches, that there were black-and-blue marks found on the back of his hand and on the shoulder; that when he arrived at the hospital Dr. Suitor made a further examination of him and found a depression in the skull, at a point immediately under the contused surface on the head, and concluded that it was best to operate on him; that Dr. Suitor thereupon sent for Dr. H. B. Perry of Northampton, who arrived at the hospital about 10 o'clock p.m., that Dr. Perry made an examination of the head of Sanderson and it was deemed best to perform an operation, whereupon Dr. Perry, in the presence of Dr. Suitor and Dr. E. C. Thorne, performed an operation, trephining at the source of the injury, to relieve the pressure on the brain; that when the button of bone was removed from the skull it was found by Dr. Perry that the depression in the skull was natural, so the button of bone was put back in place and the cut sewed up; that Sanderson was put to bed and his family notified that he was doing nicely and there was no cause for worry and no reason for them to come to the hospital that night; that Sanderson had a good pulse and was in a comfortable position; that at about 2 o'clock in the morning Dr. Thorne was at the hospital to attend a patient of his who was critically ill, and while there his attention was called to Sanderson's condition by the nurse in attendance. That he found him breathing rapidly, with a high pulse and temperature of 106.7, apparently in a dying condition. That he notified Dr. Suitor by telephone and Dr. Suitor gave instructions what to do. That Sanderson passed away about 3 o'clock in the morning; that by agreement between the insurance company and the widow of the deceased an autopsy was performed on the body of Sanderson on January 24, by Dr. George P. Twitchell, medical examiner of the district, Dr. Halbert G. Stetson being present and observing the condition of the brain during the autopsy; that the autopsy revealed that all the organs in the man's body were in normal and healthy condition. That there

was no evidence of a diseased condition of the arteries or the heart. That the brain was examined in sections, visually and by manipulation. That it was found that there was a hemorrhage in the lateral ventricles and in the third and fourth ventricles; that it was found that the ventricles and the spinal canal were gorged by the hemorrhage and that the hemorrhage caused death.

There was no direct evidence tending to show how or in what manner Sanderson fell from the wagon. There was no positive evidence as to whether the hemorrhage did occur before or after he fell from the wagon, but from the circumstances as disclosed by all the evidence, we find as a fact that Sanderson either fell or was thrown from the wagon while he was in the employ of said Black, returning from his work with his tools, to the shops of said Black in South Deerfield, and that the cut and contusion which was found on his head immediately after the fall, and the black-and-blue spots found on his shoulder and hand were made by the fall.

Several physicians were called, on both sides of the case, some testifying that in their opinion the hemorrhage was caused solely by the fall, and others testifying that in their opinion the hemorrhage preceded the fall and it was probable that the fall resulted from the hemorrhage. All of the physicians who testified on both sides of the case agreed that a traumatic injury of this kind on the head, caused in the manner that this injury was, might have caused a hemorrhage in the place where the hemorrhage was found, without any fracture of the skull.

We find, therefore, upon all the evidence in the case, that Sanderson's death was due to the accident, while he was acting for his employer in the course of his employment.

At the close of the evidence, and before the arguments, James T. Connolly, Esq., made certain requests for rulings and findings, copy of which is hereto annexed, which requests are refused, in so far as they are not in accord with the foregoing findings.

DUDLEY M. HOLMAN.

WILLIAM A. DAVENPORT.

JAMES B. BRIDGES.

*Requests of Insurer for Findings of Fact and Law by Committee of Arbitration.*

The Globe Indemnity Company, insurer, requests the following findings of fact and law after hearing in above matter: —

1. There is no evidence that Sanderson stood up in the buggy he was driving and was thrown from the buggy by violence.

2. There is no evidence that the horse he was driving stopped suddenly or started suddenly while he was standing in the buggy.

3. That there is no evidence that, if he fell from the buggy, he made the slightest attempt to save himself.

4. Any theory or conclusion based upon the assumption of facts that have not been proved is mere conjecture.

5. That the wound and bruises on Sanderson's head and body are consistent with a cerebral hemorrhage followed by a fall, and are as consistent with this theory as with any other theory.

6. That the actual injuries as shown upon the skull cannot be considered of importance in determining whether they were received before there was a hemorrhage of the brain or after such hemorrhage.

7. The fact that Sanderson did not try to save himself is not consistent with a fall from the buggy while he was in possession of his senses.

8. The finding of clotted blood in the lateral ventricles, the third and fourth ventricles and the upper part of the spinal canal is typical of a hemorrhage from natural causes.

9. Hemorrhages of the brain occur where there is no sclerotic condition of the arteries and no evidences of heart trouble.

10. Aneurisms occur without warning and without a disease of the arteries or other organs of the body.

11. The rupture in the brain and the flooding of the lateral ventricles, etc., is consistent with a ruptured aneurism which could not have been diagnosed and from which no symptoms might have been apparent previous to the rupture.    ♪

12. The location of a clot of blood as disclosed by the autopsy is not consistent with a theory of traumatic origin.



13. It has not been proved beyond conjecture that the accident had anything to do with the death of Sanderson.

14. It cannot be found in this case that death resulted from an accident arising out of and in the course of the employment of Sanderson.

By its attorney,  
JAMES T. CONNOLLY.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, April 23, 1913, at 2 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board finds, upon all the evidence, that the employee, Willis C. Sanderson, received a personal injury arising out of and in the course of his employment, by reason of having been thrown from the wagon in which he was seated. The position of his body when found showed that he did not fall inertly from his seat, as would have been the case had he sustained an apoplectic shock preceding and causing the fall. The weight of all the evidence showed that he was thrown by an accident, and not by a stroke of apoplexy or other natural cause; and that he was thrown from the wagon by the sudden moving or starting of the horse, the horse having been found trotting along about three-quarters of a mile away within five minutes from the time the employee had been seen driving him along the road. The body was found on the side of the road, beyond the beaten wheel tracks, where he would not naturally be found if he had fallen inertly because of a stroke of apoplexy; his head was pointing in a direction opposite to that in which he was driving. He was unconscious, evidently on the spot on which he struck, on his fall from the wagon.

Only a few minutes prior to the injury, the said employee had been seen by a friend, apparently being in his usual good health, driving towards the shop of his employer, having just returned from the home of Thomas Fleming, where he had repaired a pump, and where, also, to all outward appearance, he was in

normal health. When found, he had a wound on his head, extending through the scalp to the skull, which caused a hemorrhage from the periosteum, and there was a contused surface about the wound and black and blue marks on his hand and shoulder. He died about ten hours after the injury, from hemorrhage of the brain.

The post-mortem examination showed that the employee's heart was in a perfectly normal condition. There was no evidence of degeneration in the arteries, and the kidneys and other vital organs were those of a normal, healthy man. His previous medical history showed that he had never suffered from syphilis, or from any disease that would have caused degeneration of the arteries. The medical testimony showed that it was very unusual for a man of his age, forty-seven years, and excellent physical condition to suffer from a stroke of apoplexy, and that it was only in extremely unusual cases that a first shock causes death. The preponderance of all the medical and circumstantial evidence shows that a trauma preceded and caused the hemorrhage which resulted in the death of the said employee, and the Board so finds.

The Industrial Accident Board therefore finds that there is due Fannie E. Sanderson, the widow of the said Willis C. Sanderson, from the Globe Indemnity Company, the sum of \$2,025, in weekly payments of \$6.75, for a period of three hundred weeks from the date of the injury, Jan. 22, 1913, the said Fannie E. Sanderson being conclusively presumed to be wholly dependent upon the said employee under section 7, Part II., of the Workmen's Compensation Act, living with him at the time of his death.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 131.

NICHOLAS J. GROGAN, *Employee.*

INDEPENDENT ICE COMPANY, *Employer.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

CASUAL EMPLOYMENT CLAIMED BY THE INSURER. COMMITTEE OF ARBITRATION FINDS EMPLOYMENT TO BE CASUAL. INDUSTRIAL ACCIDENT BOARD REVERSES FINDINGS.

The employee testified before the committee of arbitration that he did not know whether he was to be hired for an hour, for five hours or for any particular time. He stated that the person who gave him the information that he should have employment told him that he could go to work on the ice team, and the person who actually hired him told him that he did not know how long the employment would last.

When the matter came before the Industrial Accident Board on review, the employee further testified with reference to the conversation as follows:—

Q. Just what did he say? A. I said, "I suppose it is pretty steady, is it?" like that to Mr. Stuart. He said, "I cannot tell; you might not get through to-night, you might not for a week, or two or three days." I said, "All right." He told me where to go.

*Held*, that the employment was casual and the employee not entitled to compensation.

Review before the Industrial Accident Board.

*Decision.*—The Industrial Accident Board, revising the decision of the committee of arbitration, finds that the employment was not casual, and that the employee is entitled to compensation under the statute.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Nicholas J. Grogan v. Frankfort General Insurance Company, this being case No. 131 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, James E. Millea of Peabody, representing the employee, and Horace G. Pender, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Peabody, Mass., Thursday, March 13, 1913, at 10.30 A.M.

In this case it is agreed that while working for the Independent Ice Company at wages corresponding to \$12 per week, Nicholas J. Grogan received an injury which incapacitated him

for work from July 6, 1912, to Aug. 6, 1912, the Independent Ice Company being insured under the Workmen's Compensation Act with the Frankfort General Insurance Company. The question in dispute is whether or not Grogan was an employee in the meaning of the law as defined in Part V., "Miscellaneous Provisions," chapter 751, Acts of 1911, and amendments thereto.

From the testimony it appears that Nicholas J. Grogan, a gardener by occupation, was regularly employed by a Mr. McElroy of Peabody, whose business is taking care of gentlemen's places, cutting lawns, etc., in and around the town of Peabody, Mass.

Grogan testified that he had worked for McElroy for some years, beginning his employment in April of each year and continuing until November. If for any reason there was a slackness in work, Grogan testified that he would sometimes get an odd job to fill in.

Owing to the drought in June and July of 1912, grass on lawns burned up and did not grow, with a resulting scarcity of work. Grogan worked with McElroy on July 4. The next morning he went to the square in Peabody, as was his usual custom, expecting to go with his boss to Lynnfield, but was told by McElroy that there was not enough to do that day for both, but to report the next morning when he could cut a lawn for a Mrs. Donovan. On Saturday morning McElroy again said that there was not enough work for both himself and Grogan that day and told Grogan that he would have work for him on Monday.

Subsequently, Grogan met a man named Brown, employed by the Independent Ice Company, who told Grogan that Mr. Stuart, of the Ice Company, wanted an extra man on an ice team. It appears, on account of the great heat and the day being Saturday, an extra supply of ice being required, that Stuart put on an extra team to go to the ice house, some distance from the town, to bring a supply of ice to the square, where the retail teams could, without loss of time, replenish their stock.

Grogan testified that he did not know whether he was to be hired for an hour, for five hours or for any particular time.

The man who told him he could go to work on the ice team, and the man who hired him told him they did not know how long that employment would last; it might be an hour, and it might be more than that. Grogan testified that he was told, "I want you and I cannot tell whether you are to get through to-night or not." Grogan further testified that at the time he hired out with the Independent Ice Company he expected to go to work for McElroy on Monday morning.

Grogan went to work for the ice company at 11 o'clock, and at 3.30 P.M., while working at the ice house loading a wagon, a cake of ice slipped and fell on his foot with the incapacity as stated.

Part V. of the Workmen's Compensation Act, in section 2, paragraph 3, defines the word "employee" as including every person in the employ of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer.

In this case, Grogan's employment for the Independent Ice Company was in the usual course of the trade, profession, business or occupation of his employer; but it appears to be casual in the dictionary definitions of "Occurring at uncertain times," "One who does casual or occasional jobs" (Murray); "A laborer or artisan employed only irregularly" (Century); "Arising from chance; not certain" (Johnson); and "Coming at times; without regularity" (Imperial). It also appears that the requirements of the master in this case carry out the idea of the casual nature of the employment, viz., an exceedingly hot Saturday; the necessity of the Independent Ice Company to put in an extra supply of ice to customers which would last until the next Monday, and in consequence the putting on by the ice company of an extra team to bring ice from the storehouse to the town square, so that for this day the retail supply teams might be relieved, because of the unusual condition, of their regular custom of going to the ice house to replenish their supply. Employment on the extra supply team, for this special emergency was, therefore, in the opinion of the arbitrators, because of these conditions, casual in both character and tenure.

The English Workmen's Compensation Law, on which the

Massachusetts act is largely modeled, says: "A workman does not include a person whose employment is of a 'casual' nature, *and* who is employed otherwise than for the purposes of the trade, business, etc." In the Massachusetts Workmen's Compensation Act, however, instead of the word "and," as used in the English act, the co-ordinating particle "or," that marks an alternative, corresponding to *either*, is used. It is evident, therefore, that the words of the Massachusetts act must be construed to mean that when the employment is *either* casual or not in the course of the trade, profession, etc., of the employer, either alternative will exclude an injured workman from the benefits of the act.

*Held*, that in this case it appears that the employment of Grogan comes within the definition of "casual" as defined in paragraph 3 of section 2 of Part V. of the act, and for this reason he is not entitled to compensation for this injury.

EDW. F. MCSWEENEY.

HORACE G. PENDER.

I dissent from this report.

JAMES E. MILLEA.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, April 16, 1913, at 11.30 A.M., and Tuesday, April 22, 1913, at 3.15 P.M., and revising the decision of the committee of arbitration finds as follows:—

It was agreed before the committee of arbitration that the employee received wages equivalent to an average weekly payment of \$12 while in the employ of the Independent Ice Company, and that he received an injury on July 6, 1912, which totally incapacitated him for work until Aug. 6, 1912, the only question in dispute being whether his employment was casual within the meaning of the definition given in section 2, Part V. of the statute.

The Board finds upon the testimony given before the committee of arbitration and upon the evidence submitted before the Industrial Accident Board, that Nicholas J. Grogan, the said employee, was a gardener by occupation and was regularly employed by a Mr. McElroy of Peabody.

Grogan had worked as usual for McElroy on July 4. The next morning he went to the square in Peabody, in accordance with his usual custom, expecting to be given employment, but was informed that there was not enough to do. Reporting for work on Saturday morning and being informed that there was none, Grogan met a Mr. Brown employed by the Independent Ice Company who informed him that Mr. Stuart of the company needed an extra man on the ice team. Grogan went to work for the Ice Company at 11 A.M. and at 3.30 P.M., while working at the ice house loading a wagon, a cake of ice slipped and fell on his foot incapacitating him for work as stated.

Grogan testified in part as follows upon examination by Mr. Bygrave before the Industrial Accident Board on review of the case: —

Q. When did you go to work for the Independent Ice Company? A. The 6th of July. I was hired at 8.30 by William Stuart.

Q. What did he say to you? A. He said, "Go down to Foster Street and wait until the team comes."

Q. Did he say how long you would be employed? A. He said it might be for an hour, probably I would not get through that day.

Q. Just what did he say? A. I said, "I suppose it is pretty steady, is it?" like that to Mr. Stuart. He said, "I cannot tell; you might not get through to-night, you might not for a week, or two or three days." I said, "All right." He told me where to go.

The Board further finds upon all the evidence that when the employee made his contract of employment with the Independent Ice Company nothing was said as to how long or how short a time his work was to continue. While it is true that he was hired as a result of what might be called an emergency because of the hot weather and whatever other exigencies there might have been in connection with the work, it is also true that the employee might have been employed all of Saturday and all of the following week and possibly might have been permanently employed.

The Board further finds on these facts that the employee being hired as a laborer it cannot be said that his work was casual. From the employee's standpoint this was as much a part of his business as any other kind of work while working for Mr. McElroy. He worked, perhaps, with some degree of steadiness for Mr. McElroy; nevertheless, his employment with Mr. McElroy was liable to be in one place to-day and some other place to-morrow, neither was the nature of the work from the standpoint of the ice company casual, because it was part of its business. It was not a mere incident, it was in the regular natural course of the business of the ice company.

The Board further finds that the employment not being casual the employee received an injury arising out of and in the course of his employment, and is entitled to the payment of reasonable medical and hospital services during the first two weeks after the injury from July 6, 1912, to July 19, 1912, inclusive, in amount, \$25, and to compensation based upon half his average weekly wages of \$12; that is, \$6 a week from July 20 to August 6, inclusive.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
JOSEPH A. PARKS.

CASE No. 133.

DANIEL A. KELLEY, *Employee*.  
JAMES CONNELL & SON, *Employer*.  
GLOBE INDEMNITY COMPANY, *Insurer*.

INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION IN ACCORDANCE WITH THE PROVISIONS OF THE ACT. IMPARTIAL EXAMINATION BY PHYSICIAN APPOINTED BY THE BOARD.

The sole question at issue in this case was whether the employee was totally incapacitated for work. The examining physician for the insurance company testified that the employee was able to resume work on or about Feb. 1, 1913. The impartial physician appointed by the Board testified that he had examined the injured employee on Feb. 25, 1913, and that he had not then recovered from the accident of September 20 last. All incapacity should end within a month.

*Held*, that the employee was entitled to compensation on account of total incapacity.



*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Daniel A. Kelley *v.* Globe Indemnity Company, this being case No. 133 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, Dr. Delbert L. Jackson, representing the insurer, and Edmond Russell, representing the employee, heard the parties and their witnesses at the Common Council Chamber, City Hall, Cambridge, Mass., on Monday, March 17, 1913, at 10 A.M.

Daniel A. Kelley, employed by James Connell & Son, general mason work, who are insured under the Workmen's Compensation Act in the Globe Indemnity Company, average weekly wages in excess of \$20, while working on the Peabody Museum, Divinity Avenue, Cambridge, Mass., on Monday, Sept. 20, 1912, at 8.15 in the morning, was setting a boiler, and the boiler front slipped off onto his foot, which was crushed. Kelley's disability was acknowledged by the Globe Indemnity Company, which paid Kelley \$10 a week from the date of injury to Feb. 3, 1913, and then ceased payment on the claim that Kelley was able to go to work.

On Feb. 20, 1913, the Globe Indemnity Company, claiming that Kelley was able to do his regular work, and Kelley insisting that he was not, Dr. E. A. McCarthy, whose name as an impartial physician was suggested by Mayor J. Edward Barry of Cambridge, was requested to examine Kelley as to his capacity for work, under the authority contained in section 8, Part III. of the act. On February 25 Dr. McCarthy reported that he had examined Kelley and that he had not completely recovered from the accident of September 20; objectively, there still remained some swelling in the region of the instep, which Kelley claims was not present in the morning, but which appears after exertion during the day; subjectively, he complains of pain near the base of the toes, which Dr. McCarthy believed would prevent him climbing ladders, etc. Dr. McCarthy was inclined to believe that this may be so; while

Kelley was not now totally disabled, he was so in fact. On Feb. 26, 1913, Dr. McCarthy telephoned the Industrial Accident Board that he believed Kelley would be able to resume work in a month from that date.

Arbitration was held on March 17, 1913, at 10 A.M., and Dr. McCarthy testified substantially as in his report to the Board.

Dr. Thomas F. Aiken, 784 Beacon Street, testified that he had examined Kelley twice at the request of the insurance company. Kelley had refused to have an X-ray picture taken; the metatarsal bones at the base of the foot, near junction, were broken. In his opinion, Kelley's foot had recovered sufficiently for him to go to work about February 1.

Dr. Lacey, Daniel A. Kelley's physician, testified that at the present time he thought Kelley was not able to follow his usual occupation. In his opinion, owing to the nature of the accident, the callus which may be thrown out between the joints, etc., it is difficult to say how long disability will persist.

On March 21, 1913, Kelley was referred for examination to the Massachusetts General Hospital. On April 1, 1913, Dr. F. A. Washburn, resident physician at the Massachusetts General Hospital, reported to the Board that Kelley was seen on March 27, 1913, in the out-patient department of the Massachusetts General Hospital, and that "the surgeon who examined him states that he sees no reason why he cannot work to his usual capacity."

A meeting of the arbitrators was held at the headquarters of the Industrial Accident Board, Room 201, Pemberton Building, Boston, at 4 P.M., Tuesday, April 8, 1913.

*Held*, payments for this disability having been made up to Feb. 3, 1913, Kelley is entitled to four and one-half weeks additional payment from February 3, or until March 7, 1913, at \$10 a week, or \$45, in addition to the amount already paid in accordance with the agreement between Daniel A. Kelley and the Globe Indemnity Company, approved by the Industrial Accident Board on Nov. 9, 1912.

EDW. F. MCSWEENEY.  
DELBERT L. JACKSON.  
EDMOND RUSSELL.

CASE No. 134.

GEORGE L. THOMPSON, *Employee.*

BAY STATE STAMPING COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION IN ACCORDANCE WITH THE EVIDENCE.

This employee received an injury arising out of and in the course of his employment while working on a new style tapping machine, the injury being caused by the unscrewing of a bolt which allowed a chuck to break on his finger.

*Held*, that the employee was entitled to compensation during his incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George L. Thompson v. American Mutual Liability Insurance Company, this being case No. 134 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, William H. Rose, M.D., representing the insurer, and Fred W. Cronin, representing the employee, being duly sworn, heard the parties and their witnesses at Committee Room No. 30, City Hall, Worcester, on Monday, March 10, 1913, at 9.30 A.M.

George L. Thompson, 78 Pleasant Street, Worcester, was injured on Jan. 4, 1913, at the works of the Bay State Stamping Company, 380 Chandler Street, Worcester. The injury consisted of the taking off of a part of the middle finger of the left hand at about the root of the nail, while he was engaged in the scope of his employment. His finger was injured while working on a new style tapping machine, and the accident was caused by the unscrewing of a bolt allowing a chuck to break on his finger. His average wages were \$10.50 per week.

The committee finds that the accident arose out of and in the course of his employment, and that the employee is entitled to receive compensation from January 19 to March 1, 1913, at the rate of \$5.25 per week, which is one-half his average weekly

wages, amounting in all to \$31.50, the bill of Dr. Barnes for \$12 to be paid by the insurance company.

DUDLEY M. HOLMAN.  
WILLIAM H. ROSE.  
FRED W. CRONIN.

CASE No. 136.

PETER MOREY, *Employee*.  
TYSON, WEARE & MARSHALL COMPANY, *Employer*.  
MARYLAND CASUALTY COMPANY, *Insurer*.

AVERAGE WEEKLY WAGES. PARTIES COME TO AN AGREEMENT  
AS TO CORRECT AVERAGE.

This employee was assisting in the unloading of a car of cement stone when the derrick tipped over, injuring his back and leg. The parties were unable to agree on the average weekly wage, and the matter came before a committee of arbitration. After the hearing opened the parties agreed that the average weekly wages were \$15.

The committee approves the agreement.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Peter Morey v. Maryland Casualty Company, this being case No. 136 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, W. Haliburton, representing the insurer, and T. Balboni, representing the employee, being duly sworn, heard the parties and their witnesses March 17, 1913, at 10 A.M., at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston.

It was agreed that Peter Morey was hurt on Feb. 1, 1913, in the following manner: he was unloading a car of cement stone by derrick, and in some way the derrick tipped over, jamming him between the derrick and pile of stone, injuring his back and left leg. The case went to arbitration on a dispute as to his average weekly wages.

After the hearing had proceeded for some time the attorney

for the injured man, John J. Mansfield, Esq., and Philip S. Ball, Esq., for the insurance company, came to an agreement that his average weekly wages were \$15 per week, and the committee approves the agreement.

JOSEPH A. PARKS.

WALTER S. HALIBURTON.

THOMAS BALBONI.

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CASE No. 137.

MARGARET GLENDENING, *Employee.*

AMERICAN WOOLEN COMPANY (WOOD WORSTED MILLS), *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE ENTITLED TO ADDITIONAL COMPENSATION FOR THE  
LOSS OF FINGER. ALSO ENTITLED TO COMPENSATION ON  
ACCOUNT OF INCAPACITY FOR WORK.

This employee was engaged in picking waste from the back carrier shaft when her left index finger was caught between the back carrier and the porcupine, the finger being badly lacerated and several small pieces of needles remaining in the wound when she reported to the hospital for treatment. Later the wound festered, and it became necessary to amputate the finger.

*Held*, that the employee is entitled to additional compensation on account of the loss of the finger, and to compensation on account of incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Margaret Glendenning v. American Woolen Company (Wood Worsted Mills), this being case No. 137 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman, chairman, representing the Industrial Accident Board, John O'Mahoney of Lawrence, Mass., representing the insurer, and Fred N. Chandler of Lawrence, Mass., representing the employee, heard the parties and their witnesses in the Grand Jury Room, City Hall, Lawrence, Mass., Monday, March 24, 1913, at 10 A.M.

We find that Margaret Glendening, age, twenty-four, was employed by the American Woolen Company, in the plant of the Wood Worsted Mills, South Union Street, Lawrence, Mass., as a French drawer; that her average weekly wage at the time of the accident was \$7.60; that on Saturday, Sept. 23, 1912, at 9.25 A.M., while picking waste from the back carrier shaft, her finger was caught between the back carrier and the porcupine; that the left index finger was badly lacerated and that several small pieces of needles were in the wound when she reported at the Lawrence General Hospital for treatment; that the doctor took out some small pieces of needles and bathed her hand, put three stitches in her finger and did up the injuries, and that she went home; that on the following Monday she reported to the hospital at 8.30 A.M. and saw the nurse; that she saw the nurse daily, who bathed the finger and put on a clean dressing each day. The next week she went there on Monday, and that on Monday the finger, which was a big, black sore, all festering, was shown by the nurse to a doctor (not the doctor who originally treated the finger), and he said that the stitches should be taken out, and told the nurse to take them out, which she did; that on Tuesday morning, when she again reported to the hospital, it was not in the least healed and it was all full of pus. On Wednesday she was unable to report to the hospital, having been taken with severe pains in the back of her head and trouble with her abdomen, and she called Dr. Francis A. Clegg, a physician of Lawrence, who immediately recognized the fact that she was in a critical condition as the result of the neglect of this finger, tetanus having set in. From the medical testimony it was apparent that this serious condition of the finger must have been present when she was at the hospital the last two days for treatment. For several weeks the woman was in a critical condition, and it became necessary to amputate the index finger of the left hand, which in the opinion of the attending physician would never have been necessary had she received proper treatment at the Lawrence General Hospital.

We find, therefore, on all the evidence, that there is due the injured party, Margaret Glendening, twelve weeks' special compensation for the loss of the index finger on her left hand, at

the minimum rate of \$4 per week, or \$48. We find that total incapacity existed from the date of the injury until March 17, which is fourteen weeks and one day's compensation, for which she is entitled to the minimum rate of \$4 per week, \$56.57. We find that the doctor's bill, to and including the 6th of December, being the fourteenth day after the injury, amounting to \$13, is to be paid by the insurance company.

DUDLEY M. HOLMAN.  
JOHN O'MAHONEY.  
FREDERIC N. CHANDLER.

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CASE No. 140.

JOHN HENEGAN, *Employee*.

PEMBERTON COMPANY, *Employer*.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

ADDITIONAL COMPENSATION AWARDED. MEDICAL MEMBER OF  
COMMITTEE ASSISTS IN DETERMINING THE EXTENT OF  
INJURIES.

The only question at issue in this case was whether the employee was entitled to additional compensation under section 11 (c), Part II. of the act, for the loss by severance at or above the second joint of two or more toes. An examination by a member of the committee, a physician, indicated that the injury had necessitated the amputation of the great toe of the right foot, the next toe at the second joint, and the middle toe above the first joint.

*Held*, that the employee is entitled to additional compensation as provided by section 11(c), Part II. of the act.

Review of weekly payments before the Industrial Accident Board.

*Decision*.—The Industrial Accident Board affirms the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Henegan v. American Mutual Liability Insurance Company, this being case No. 140 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Daniel

A. Arundel and John F. Sheedy of Lawrence, representing, respectively, the employee and the insurer, heard the parties and their witnesses at the City Council Chamber, City Hall, Lawrence, Friday, March 14, 1913, at 10 A.M.

It was agreed that the employee was injured Friday, Feb. 7, 1913, while in the employ of the Pemberton Company, incurring an injury to his foot while operating an elevator at the company's plant on Canal Street, Lawrence. The only question involved was whether the employee was entitled to additional compensation under section 11 (c), Part II., for the loss by severance at or above the second joint of two or more toes, and the committee found, after an examination supervised by Dr. John F. Sheedy, arbitrator for the insurer, that the injury had necessitated the amputation of the great toe of the right foot, the loss of the next toe at the second joint and of the middle toe above the first joint.

The committee of arbitration, therefore, finds that the employee is entitled to medical and hospital services and medicines during the first two weeks after the injury, to compensation for the incapacity for work resulting from the injury beginning on the fifteenth day at the rate of \$4 a week, and to the payment of the additional compensation provided by section 11 (c), Part II., or \$4 a week for a period of twenty-five weeks from the date of the injury.

JOSEPH A. PARKS.

DANIEL A. ARUNDEL.

JOHN F. SHEEDY, M.D.

*Findings and Decision of the Industrial Accident Board on Review of Weekly Payments.*

This case came before the Industrial Accident Board on review of weekly payments, under section 12, Part III., of the Workmen's Compensation Act, on Thursday, Oct. 9, 1913, the employee having received compensation in accordance with the findings of the committee of arbitration, from Feb. 21, 1913, to Aug. 21, 1913, at which latter date the insurer stopped paying compensation, claiming that all incapacity for work as a result of the personal injury received on Feb. 7, 1913, had ceased.



The payment of the weekly compensation having been suspended, the employee asked for this review, and due notice having been given, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Thursday, Oct. 9, 1913, at 11 A.M.

By agreement of the parties it was decided to arrange for an impartial examination, and Dr. Francis D. Donoghue was named by the Board to make this examination.

The physician reports substantially as follows:—

Examination shows that the employee has lost the great toe. The proximal phalanges of the second and third toes appear to have been saved and are covered by skin in a tender stump. On the top end of the second toe there is a suppurating spot, which may lead down to dead bone. It appears to be quite sore on pressure. This appears to be a case in which the portions of the bones of the two toes were saved, but the foot would be better off if a fresh operation were done and the bone taken out and tension let up on the flap, so that there would be a better stump and a less sensitive one.

The Industrial Accident Board finds, upon the evidence heard by the committee of arbitration and the report of the impartial physician, that John Henegan, the said employee, is now totally incapacitated for work as a result of the personal injury received by him on Feb. 7, 1913, said total incapacity for work continuing to a date in the future not now determinable, and that he is entitled to the payment of a weekly compensation of \$4 from Aug. 21, 1913, to the date that total incapacity for work ceases.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 142.

JOSEPH J. GOMES, *Employee.*

BOSTON ELEVATED RAILWAY COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

EMPLOYEE SUFFERING FROM HERNIA ENTITLED TO COMPENSATION ON ACCOUNT OF INCAPACITY FOR WORK.

The employee sustained a rupture on the left side while wheeling ashes with a wheelbarrow, the injury arising out of and in the course of his employment.

The employee was referred to an impartial physician for examination, to ascertain when his incapacity for work, as a result of the injury, would cease.

The surgeon reported that if the patient had been properly treated immediately after the injury, he would probably have been able to take up his work within three months from the date of the injury.

The insurer offered to pay compensation for a period of three months from Nov. 2, 1912, and furnish the employee an operation for the reduction of the hernia.

*Held*, that the employee is entitled to compensation for incapacity for a period of thirteen weeks from Nov. 2, 1912, and the committee recommends that the employee accept the proffer of the insurer to furnish an operation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph J. Gomes v. Massachusetts Employees Insurance Association, this being case No. 142 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Sherwin L. Cook of 8 Beacon Street, Boston, representing the employee, and William J. Keville of 16 State Street, Boston, representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, 201 Pemberton Building, Boston, Mass., on Wednesday, March 19, 1913, at 1 P.M.

During the night of October 18, at 4 A.M., Joseph Gomes was working, wheeling ashes into the yard with a wheelbarrow, and in the course of his employment was ruptured on the left side. He worked slowly and painfully until 8 A.M., when he finished work at the usual time. He was treated by Dr. E. J. McDonald, 119 Saratoga Street, East Boston. He remained away from work for five days.

On the return to work of Gomes on October 24 he brought with him a certificate from Dr. McDonald, which read as follows: —

EAST BOSTON, Oct. 21, 1912.

This is to certify that Mr. Joseph Gomes has a bad hernia (rupture). He began wearing a double truss to-day. He should not do any heavy work or lifting. If you could put him on some lighter work than he is doing it would improve his health and prolong his life.

Yours respectfully,

E. J. McDONALD, M.D.

Gomes was given lighter work as janitor and cleaner at the same pay, and continued at work until November 27. His duties were janitor and cleaner about the power station, viz.: to carry a pail of water containing about 2½ gallons, to mop up the floor with a long-handled brush, to remove loose lumber or other débris lying about in the cellar, to clean up the waste, and to carry out the cans of waste. In lifting these cans of waste he had a man to assist him.

On November 27 Gomes left his employment because he "could not resist any longer," and "he did not tell the foreman that he could not do his regular work and wanted lighter work, as his regular work was all the work they had to give him." William S. Toomey, the engineer in charge at Charlestown, said that on receipt of Dr. McDonald's certificate Gomes had been given lighter work, and he did not know why he left his job.

Dr. McDonald, for the employee, testified that in his opinion "the injury to Gomes was sudden, owing to the fact that there were no signs of inflammation or redness, and the history given by Gomes that he never had pain in the side before."

Dr. Wm. A. Brooks, for the insurance company, testified that he examined Gomes March 18: "found a well-marked hernia on left side and also weakness on right side. Believes that the pain he now complains of is due to a badly fitting truss. Man is constitutionally weak on both sides, and given this condition any sudden strain might bring about this result."

It was agreed by the arbitrators that the hernia arose out of and during the employment of Gomes. The only question at issue was the amount of resulting disability. Gomes was referred to the Massachusetts General Hospital for examination.

Dr. Washburn, resident physician of the Massachusetts General Hospital, reported under date of March 27: —

The surgeon who saw Gomes in the out-patient department states that he does not see why, as the hernia is perfectly well held by truss on exertion, the patient should not do full heavy work, as many men do with trusses. He suggests operation if the patient wishes it.

This not being an answer to the question desired by the arbitrators, Dr. Washburn was communicated with by telephone and asked to submit an opinion of the surgeon who examined Gomes as to the amount of disability, and under date of March 28, Dr. Washburn reported: —

It is the opinion of the surgeon who examined him that from the time the diagnosis was first made, if the patient had been operated upon he would probably have been able to take up his work as well as ever within three months.

The arbitrators were embarrassed in coming to a decision in this matter because of the fact that this appeared to be a case in which, if it had been attended to immediately after the injury, the disability could have been remedied and the injured employee been at work months ago. The application for arbitration was not made by the injured employee, Gomes, until almost twenty weeks after the date of injury. The inquiry showed that the insurance company could not properly be held to blame for this delay. As stated, Gomes, injured on October 18, had returned to work on October 21, and had left on November 27, without notifying the insurance company or his employer that he was disabled as a result of his employment. His failure to make application for disability payments, to which he was entitled under the law, was due to his ignorance of the law. Under the circumstances, the matter was taken up with the insurance company, in the hope that some adjustment which would be fair to the injured employee could be agreed upon. Under date of April 12 the chairman of the arbitration committee received a letter from the attorneys for the Massachusetts Employees Insurance Association, making the following proposition: —

The association is prepared to offer, subject to the approval of the arbitration committee, to pay Gomes compensation equal to one-half his

average weekly wages for three months from Nov. 2, 1912 (being the fifteenth day after his injury), less an amount equal to one-third of the sum of the fees of the arbitrators, as provided by section 9 of Part III. of the act, and, in lieu of all other reasonable bills for medical and hospital attendance, no such bills having been presented to the association, will furnish Gomes an operation for the reduction of the hernia from which he suffers.

*Held*, that Joseph J. Gomes is entitled to compensation of \$6.30 a week for thirteen weeks from Nov. 2, 1912, or a total of \$81.90, and the arbitrators further recommend that Mr. Gomes accept the proffer of the Massachusetts Employees Insurance Association to "furnish Gomes an operation for the reduction of the hernia from which he suffers."

EDW. F. MCSWEENEY.

W. J. KEVILLE.

SHERWIN L. COOK.

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CASE No. 143.

JOHN BAKER, *Employee*.

DOVER STAMPING AND MANUFACTURING COMPANY, *Employer*.

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer*.

#### INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION IN ACCORDANCE WITH THE EVIDENCE.

This employee sustained an injury to his right hand while helping a teamster load a die on his wagon, the die slipping and badly jamming his hand, and so injuring the middle finger as to necessitate amputation.

He had signed a settlement receipt agreeing that his incapacity for work ceased on Feb. 20, 1913. The medical evidence submitted indicated, however, that his incapacity would cease on or about May 1.

*Held*, that the employee was entitled to compensation on account of incapacity for work in accordance with the medical evidence.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Baker v. Frankfort General Insurance Company, this being case No. 143 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Hol-

man of the Industrial Accident Board, chairman, Walter Isidor, representing the employee, and Horace G. Pender, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Wednesday, April 2, 1913, at 2 P.M.

The committee finds that John Baker of 64 Kinnard Street, Cambridge, Mass., employed by the Dover Stamping and Manufacturing Company, 385 Putnam Avenue, Cambridge, while helping a teamster load a die on a team on Cornhill, near Washington Street, Boston, had the middle finger injured so that amputation was necessary.

The committee further finds that he has already been paid the sum of \$111.45 for the disability caused by this accident which arose out of and in the course of his employment, and that this amount, \$111.45, includes the specific payment of \$4.13 per week, for the loss by severance of the middle finger of the right hand, for a period of twelve weeks.

The committee finds, also, that he gave a settlement receipt on Feb. 20, 1913, in which he stated that his disability had ceased on February 20, but that, as a matter of fact, the disability did not cease on February 20, and that, by agreement with the Frankfort General Insurance Company, and from the medical evidence submitted, the disability will cease on or about May 1; and that the Frankfort General Insurance Company shall pay compensation from Feb. 20 to May 1, 1913, at the rate of \$4.13 per week, his average weekly wage being \$8.26.

DUDLEY M. HOLMAN.  
WALTER O. ISIDOR.  
HORACE G. PENDER.

CASE No. 146.

PATRICK CALLAHAN, *Employee.*

C. H. BREYMANN & BROS., *Employer.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer.*

AVERAGE WEEKLY WAGES AND PERIOD OF INCAPACITY IN QUESTION. FINDINGS IN ACCORDANCE WITH THE EVIDENCE. ADDITIONAL COMPENSATION DUE FOR LOSS OF EYE.

The questions involved in this case were the average weekly wages and the period of incapacity for work, it being agreed that he was entitled to the payment of fifty additional weeks for the loss of vision in the right eye.

The evidence indicated that the average weekly wages of the employee were \$13.14, and that he was incapacitated for work for a period of eleven weeks from the date of the injury.

*Held*, that the employee is entitled to compensation at the rate of \$6.57 weekly, and to additional compensation for fifty weeks for the loss of vision in the right eye.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick Callahan v. Fidelity and Deposit Company of Maryland, this being case No. 146 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Edward L. McManus, representing the employee, and John A. Keefe, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Monday, March 24, 1913, at 10 A.M.

The employee was injured on Aug. 16, 1912, receiving an injury which resulted in the loss of vision of the right eye. The case went to arbitration on the question of average weekly wages and the period of disability.

The committee finds that the injured employee was totally disabled, as a result of the accident, for a period of eleven weeks; that his average weekly wages were \$13.14, and that he is entitled to nine weeks' compensation for disability and to an

additional compensation at the rate of \$6.57, half his average weekly wages, for fifty weeks for the loss of one eye.

JOSEPH A. PARKS.  
JOHN A. KEEFE.  
EDWARD L. McMANUS.

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CASE No. 147.

PHILIP BAIONA, BY ISABELLA BAIONA, WIDOW, *Employee*.  
WILLIAMS & BANGS, *Employer*.  
EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

EMPLOYEE DIES OF PNEUMONIA FOLLOWING ATTACK OF ACUTE  
MANIA. WIDOW CLAIMS COMPENSATION ON ACCOUNT OF  
LEAD POISONING. CLAIM DISALLOWED.

This employee, a painter, died in the Westborough Hospital for the insane on Nov. 29, 1912, of pneumonia, following an attack of acute mania. He was survived by a widow and five children, all of whom were under eighteen years of age. The widow claimed that the employee died of lead poisoning, as the result of an injury arising out of and in the course of his employment.

Medical evidence was introduced indicating that the deceased had suffered from plumbism for a period of at least four years, having been sick from this cause on several occasions.

It was also in evidence that the only paint furnished by the employers since September, 1911, was "Washotint," the superintendent testifying that this paint did not contain lead. A sealed gallon package of "Washotint" was sent to the Institute of Technology for analysis, to ascertain whether it was "free from lead as alleged, and if lead is found therein, in what proportion."

The report indicated first, that lead was present only in small quantity, and second, that it is present there as lead sulphate, in which form it does not produce plumbism.

*Held*, that the injury did not arise out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Philip Baiona, employee, by Isabella Baiona, widow, *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 147 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Frank Leveroni, Esq., of Boston, representing the em-



ployee, John G. Brackett, Esq., of Boston, representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Thursday, March 20, 1913, at 10 A.M., and on Tuesday, April 1, 1913, at 10 A.M.

Philip Baiona, thirty years old, occupation, painter, average weekly wage, \$14.50, employed by the trustees of the Old South Building Association, died in the Westborough Hospital for the Insane, on Nov. 29, 1912, of pneumonia, following an attack of acute mania. Baiona, the deceased employee, was survived by Isabella Baiona, his widow, and five children, all of whom are under eighteen years of age. The claim is made by the dependent widow that her husband died of an injury arising out of and in the course of his employment, to wit: lead poisoning.

At the meeting of the committee of arbitration held in this case it was developed by the testimony of Dr. Praino, 31 Broadway Extension, Boston, Dr. Faillaice, 15 Broadway Extension, and from a certificate of the Massachusetts General Hospital, that the deceased employee, Baiona, had been suffering from plumbism for a period of at least four years, having been sick from this cause on several occasions during this period. Testimony as to the manner of Baiona's last sickness, of the examination by physicians at his home, and his removal to the Psychopathic Hospital and thence to the Westborough Hospital, where he died of pneumonia, as stated, were given in full.

George E. Guthrie on oath stated that he became superintendent of the Old South Building, October, 1910, Baiona then being in the employ of the trustees of the building, having been there since Nov. 7, 1907, during all this time being employed as a painter and as a washer, cleaning walls, etc. The last day that Baiona used any paint that they mixed themselves at the building with paint and oil, was on Sept. 8, 1911; after Sept. 8, 1911, Baiona used no paint with lead in it, using only a paint called "Washotint" made by the Bridgeport Wood Finishing Company. Since September, 1911, Baiona used no paint, while in the employment of the trustees of the Old South Building Association, that contained lead.

The arbitrators were furnished with a statement of all the benzine, turpentine, "Washotint" varnish, etc., used by the Old South Building trustees, showing that the firm had used only "Washotint" paint during this period since September, 1911.

Under the circumstances the arbitrators did not deem it necessary to go further into proof that Baiona's death was the result of lead poisoning. If it could be shown that the paint he had been working on for a period of ten months prior to the coming into operation of the Workmen's Compensation Act, and from July 1 subsequently until the time of his death, did not contain lead in its poisonous form, his death could not legally be said to have arisen out of his employment.

A sealed gallon package of the "Washotint" paint used by Baiona since September, 1911, was secured and sent to President MacLaurin of the Technology for analysis, as to whether this "Washotint" is "free from lead as alleged and if lead is found therein, in what proportion." On April 21, 1913, Augustus H. Gill, Ph.D., reported to the Industrial Accident Board as follows:—

MR. EDWARD F. MCSWEENEY, *Industrial Accident Board, 12 Pemberton Square, Boston, Mass.*

DEAR SIR:—Dr. MacLaurin has referred your letter of the 8th to me for an analysis and reply. I would say that I have carefully analyzed the sample of "Bridgeport Standard Washotint," brought to me by the superintendent of Williams & Bangs of the Old South Building, and find that it does contain a small quantity of lead.

It is to be noted: first, that the lead is present only in small quantity; and secondly, it is present there as lead sulphate, in which form it does not produce plumbism. In view of these facts it did not seem to me that the determination of the amount of lead was necessary.

Yours very truly,

AUGUSTUS H. GILL.

The arbitrators find that Philip Baiona's death was not due to an injury arising out of or in the course of his employment, and that consequently the dependent widow, Isabella Baiona, is not entitled to compensation under the act.

EDW. F. MCSWEENEY.

FRANK LEVERONI.

JOHN G. BRACKETT.

CASE No. 148.

TIMOTHY LYNCH, *Employee.*

MAGEE FURNACE COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY IN ACCORDANCE WITH THE EVIDENCE.

The employee, while working in the molding department, catching molten iron in his ladle, received first and second degree burns on his left leg and foot, being pushed under a stream of molten iron by a car which started of its own accord.

The evidence indicated that he was incapacitated until Dec. 19, 1912.

*Held*, that the employee was entitled to compensation in accordance with the evidence.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Timothy Lynch v. Employers' Liability Assurance Corporation, Ltd., this being case No. 148 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Owen Cunningham, Esq., representing the insurer, and W. Frederick Murray, representing the employee, being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Chelsea, Mass., Monday, March 31, 1913, at 10 A.M.

The committee finds that Timothy Lynch, living at 94 Highland Street, Chelsea, was employed by the Magee Furnace Company, at 97 Marginal Street, Chelsea, as a piece worker in the molding department; that while he was standing at a cupola, catching molten iron in his ladle, a car standing on a track started of its own accord, and pushed him under the stream of molten iron flowing from the cupola; that he received first and second degree burns on his left leg and foot.

The committee finds that by agreement the average weekly wages of the employee were \$15.50, and that the accident arose

out of and in the course of his employment; that total incapacity ceased on Dec. 19, 1912; and that there is due the injured party, Timothy Lynch, one-half his average weekly wages as compensation (\$7.75) from the fifteenth day after the injury to Dec. 19, 1912, a period of thirteen weeks, amounting to \$100.75, and that the medical bills contracted during the first two weeks after the injury shall be paid by the insurance company.

DUDLEY M. HOLMAN.  
OWEN A. CUNNINGHAM.  
W. FREDERICK MURRAY.

CASE No. 150.

JOHN CRIPPS, BY JULIA CRIPPS, WIDOW, *Employee*.  
DAVID B. COGAN, *Employer*.  
ÆTNA LIFE INSURANCE COMPANY, *Insurer*.

SIGNING OF COMMON-LAW RELEASE BY EMPLOYEE DOES NOT  
OPERATE TO DEPRIVE THE WIDOW OF HER RIGHTS UNDER  
THE WORKMEN'S COMPENSATION ACT.

The employee, while driving a truck belonging to his employer, was struck by a car of the Boston Elevated Railway Company, being thrown to the street and sustaining injuries to his back and right side. An adjuster for the Elevated called upon him on the afternoon of the day of the injury and obtained a release, the consideration being a payment of \$20. The employee returned to work and about three months later was obliged to report at the City Hospital for treatment, an abscess having developed on the right hip. Several weeks later he died. The widow claimed compensation under the Workmen's Compensation Act.

*Held*, that the death of the employee was due to an injury arising out of and in the course of his employment, and that the widow is entitled to compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Cripps, employee, by Julia Cripps, widow, *v.* Ætna Life Insurance Company, this being case No. 150 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Daniel D. Donovan of Boston, representing the employee, and William W. Risk of Boston, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, in the Pemberton Building, Boston, Mass., Monday, March 24, 1913, at 10 A.M.; at Room 926, Tremont Building, Boston, Tuesday, March 25, 1913, at 2 P.M., and Monday, March 31, 1913, at 2 P.M.

John H. Cripps, the employee, died, leaving a wife, Julia Cripps, and six children, all under eighteen years of age. He was employed by David B. Cogan, engaged in the general trucking and teaming business, at 33 Howard Street, Boston, who had his employees insured under the Workmen's Compensation Act in the Ætna Life Insurance Company. The average weekly wages of Cripps were \$13.50.

On Wednesday, Oct. 23, 1912, about 7.45 A.M., Mr. Cripps was driving a truck belonging to Cogan, and was struck at the corner of Reading and Southampton streets, Boston, by a Neponset car, No. 1578, of the Boston Elevated Railway Company, throwing him to the street, injuring his back and right side.

After the collision, Cripps took his team back to the stable and went to his home, 57 Batchelder Street, Roxbury. On the afternoon of October 23 Mr. P. H. Titus, employed by the Boston Elevated Railroad Company as an adjuster of claims, called at the home of Cripps, and on the payment to him of \$20 he signed a release against the Boston Elevated Railroad.

Cripps returned to work on the Monday following his injury, and continued to work until Jan. 13, 1913, when he had pains in his side, and consulted a doctor. He went to the City Hospital on Jan. 21, 1913, where he was treated for an abscess of the right hip, which gradually grew worse until February 12, when he died.

*Held*, that the death of John H. Cripps was due to an injury arising out of and in the course of his employment, and that the cause of the injury and death was the collision above described.

On or about the 19th of February, 1913, this case was brought to the attention of the Industrial Accident Board, it

being represented to them that the widow, Julia Cripps, and her six children were destitute. Because of the payment of the \$20 by the Elevated Railway Company to Cripps, the Aetna Life Insurance Company refused to pay compensation under the Workmen's Compensation Act. Mr. Edward F. McSweeney, a member of the Industrial Accident Board, called this matter to the attention of Mr. Russell A. Sears, general attorney for the Elevated road. Mr. Sears' testimony as to the facts is as follows:—

Some three or four weeks ago, the exact date I do not recall I had a conference with Mr. McSweeney, and for the first time of my own knowledge these facts came to my attention. It was represented that Mrs. Cripps was left a widow with four or five small children of tender age and that our company had already taken a release from Mr. Cripps during his life and Mr. McSweeney asked me if we would make a contribution toward her assistance. After a day or two I wrote a letter to Mr. McSweeney in which I told him that our company would make a contribution of \$500, to be paid through such person as he might name, or board, the first payment to be \$100 and after that time in remittances, weekly, until the sum of \$500 was paid. Now I think after that a letter was sent by Mr. McSweeney acknowledging that letter in which he said he wanted to confer with the Board about it. After a conference with Mr. Morris, the matter was left in the form that we would be willing to pay \$500, notwithstanding the fact that Mrs. Cripps would undertake to pursue her remedy, if any, against the insurance company, or Mr. Cripps' employer, for compensation, and one of these payments has already been made through Bishop Anderson.

Q. Now, Mr. Sears, did the widow sign any release of any kind running to the L? A. Mrs. Cripps? Never.

Q. Did she sign any release at all? A. No.

Q. Then the L has no release of any kind in connection with this accident except the release signed by Mr. Cripps? A. That's all.

Q. Mr. Sears, have you ever seen Mrs. Cripps? A. No.

Q. Have you ever met anybody representing her? A. No.

Q. Has any claim been made on you by Mrs. Cripps or anybody representing her on account of this accident? A. No.

Q. And excepting Mr. McSweeney, has anybody, and Father Alchin, has anybody seen you with reference to Mrs. Cripps about this case? A. No.

Q. Or on account of any liability existing towards Mrs. Cripps? A. No.

Q. Whether or not this money was given by you upon representations by Mr. McSweeney on account of the impoverished and necessitous condition of Mrs. Cripps? A. That was the reason.

Q. It was given by you as a pure gift, except that you asked Mr. McSweeney to see that in case the insurance company sought to recover over against you that the money should be returned to you as a loan?

A. That was it.

Q. It was purely in the nature of a gift? A. That's all.

Q. No writing, paper or anything in the way of recognizing any claim or release was ever offered or asked for? A. No.

It was the contention of the Ætna Life Insurance Company that it was not bound to pay the dependent widow, Julia Cripps, the benefit provided for by the Workmen's Compensation Act on three grounds: —

1. That the release by John H. Cripps to the Boston Elevated Railway Company constituted an election under section 15, Part III. of the Workmen's Compensation Act, and this deprives his dependent widow and children of any rights under the act.

2. That the \$500 paid to Bishop Anderson by the Boston Elevated Railway Company for the benefit of the widow constituted an election of the widow against a third party, which deprives her of any rights under the Workmen's Compensation Act.

3. That Cripps was not in fact insured under the Workmen's Compensation Act, his employer not being David B. Cogan, who is insured under the act in the Ætna Life Insurance Company, but one Gilbert D. Pierce, to whom Cogan was alleged to have sold his business of teaming and trucking.

That Cogan was not the employer of Cripps at the time of his injury, David B. Cogan testified that he had a warehouse business at 468 Blue Hill Avenue, Dorchester, and he bought this warehouse in April, 1911. He went into the teaming business in 1899, and worked at it until he found "it was getting too much for him." Having a chance to buy a storage warehouse on Blue Hill Avenue, he bought it in 1911, and sold out his trucking and transfer business some time between April and June, 1911, to Gilbert D. Pierce. No papers were passed until Aug. 31, 1912, and no money, either by way of principal or interest, has ever been paid by Pierce to Cogan.

Mr. Cogan testified that in August, 1912, fourteen months after he claimed to have sold the business to Pierce, he de-

livered to him a bill of sale and "had a little bother down town," and "I was told that it was well to protect myself by having a bill of sale. This is all a friendly matter with me and Mr. Pierce."

It was testified that while Cogan claimed he had no interest in the business after June, 1911, on two separate occasions when Pierce was sick for a considerable period, Cogan was in charge of the stable and transfer business. In August of 1912 Pierce filed in the city hall a certified copy that the business of Cogan had been transferred to himself, but that otherwise no publicity had been given as to the change of ownership.

Gilbert D. Pierce, residing at 68 Blue Hill Avenue, said that his business was the Cogan Transfer Company, teaming trunks, theatrical baggage, etc., and was the owner of this since June 12, 1911, and in general corroborated the statements made by Mr. Cogan. He further testified that he was sick for a long period on two occasions, and that Cogan had taken care of the business; that he had never told the public that Cogan's business had changed hands; that he never told his employees that the business had changed hands, but that he would have told them if they had asked, and that he had often said to his employees, "I am running this business, not Cogan." When Cripps was injured he was covered by a policy of Workmen's Compensation insurance, in the Aetna Life Insurance Company, issued in the name of David B. Cogan, through the insurance broker's office of Mr. Davidson, and covering the business in which Cripps was employed at the time of the injury. The policy for insurance under the Workmen's Compensation Act being taken out in Cogan's name was not intended to evade the payment of insurance to Cripps or any other injured employee. Earl E. Davidson, an insurance broker, testified that he placed a liability insurance policy for David B. Cogan on his transfer business in 1904, which policy had been renewed from year to year at the Aetna Life Insurance Company, sometimes at Mr. Cogan's request and at other times the renewed policy was sent to him and Cogan sent a check which settled the matter as far as Davidson was concerned up to October 23. Mr. Davidson further testified that he had no reason to know and did not know that there had been any change in the ownership



of the Cogan business. When the policy was renewed from July, 1911, to July, 1912, it was supposed that the business was running under the same ownership as before, and that Mr. Pierce was there as manager of the business. He further testified that when the accident occurred to Cripps, in October, the payment had not been made on the insurance policy, which had been issued in Cogan's name on the previous July, covering the employees, under the Workmen's Compensation Act. After the accident to Cripps, Pierce telephoned to Davidson, who called at the office of the Cogan Transfer Company. Pierce then paid Davidson the overdue premium in cash, and asked him to "date back the bill for him previous to the time when the accident occurred, and make it out to G. D. Pierce, doing business as the Cogan Transfer Company." According to Mr. Davidson's books this premium was paid on the 23d of October, 1912. He sent a bill for this premium the first of every month, as was his usual custom, but the bill was not paid until the 23d of October following the accident. To October 23 all policies for insurance were sent addressed to David B. Cogan, 42 Howland Street. Between June, 1911, and the date of the accident, insurance policies had been taken out to cover the Cogan Transfer Company's business, including one on a horse. These policies were payable to David B. Cogan.

It further appears that the report of the accident, furnished the Industrial Accident Board under the Workmen's Compensation Act, was signed by G. D. Pierce as manager, and gave the employer's name as David B. Cogan. This report was dated Oct. 24, 1912.

The committee of arbitration finds as follows: that the release by John H. Cripps to the Boston Elevated railroad, in consideration of the payment of \$20, made on the afternoon of October 23, does not deprive the widow and dependent children of their rights under the Workmen's Compensation Act. In our opinion the right of dependents under this act, where death ultimately results from the injury, is a separate and independent right.

The committee of arbitration further finds that the payment of the money by the Elevated railroad to Bishop Anderson for the benefit of the widow and dependent children was a gift,

and does not in any way constitute an election under Part III., section 15, Acts of 1912, and therefore does not deprive the dependent widow of the benefits she is entitled to under the Workmen's Compensation Act.

With reference to the claim that Pierce was the owner of the business in which Cripps was employed, and that therefore this insurance covering Cripps is not valid, and the Ætna Life Insurance Company is not bound to pay any claims to the dependent widow, because Cripps at the time was an employee of Pierce, the committee of arbitration finds that the transfer from Cogan to Pierce was not made in good faith; that in fact there was no actual sale or transfer of the property or of the teaming and transfer business, and it was merely a colorable transaction for the sake of evading liability on the part of Cogan, for in reality the business was conducted by Cogan, and Pierce was an employee of his; that the arrangements made June, 1912, amounted merely to this: that Pierce was to assume control of the property; no documents were passed, and no money paid then or any other time. The testimony of both Cogan and Pierce shows that the insurance policy covering this business was in the name of Cogan; that when a mortgage and note was passed between Cogan and Pierce in August, 1912, this was because Cogan was in danger of a suit at law, and wished to protect the business from any attachments. The notice of the change in ownership from Cogan to Pierce filed in the city hall in August was for this same purpose. The employees of the Cogan Transfer Company supposed that they were working for Cogan. After the accident on October 23 Pierce sent for the insurance agent and paid his overdue Cogan premium, and asked him to date the bill back so that he would be protected. He subsequently sent in a report to the Industrial Accident Board, as required by law, giving the name of the owner as David B. Cogan, and signed his own name as G. D. Pierce, Manager, and it was not until after the accident to Cripps that he asked the insurance company to change the name on the policy to correspond with the alleged change of ownership.

The committee of arbitration, therefore, finds that there has been no change of ownership of the Cogan business; that at

the time of the accident to Cripps, David B. Cogan was still the owner of the business, on Oct. 23, 1912, and is the person insured on the policy No. B 5877 of the Ætna Life Insurance Company, and, in consequence, the injured employee, John H. Cripps, is covered under the Workmen's Compensation Act.

*Held*, that John H. Cripps, employed by David B. Cogan, insured in the Ætna Life Insurance Company, died Feb. 12, 1913, as a result of an injury arising out of and in the course of his employment, while in the employ of said David B. Cogan, and his dependent widow, Julia Cripps, is entitled to compensation based on one-half his average weekly earnings, \$13.50, or \$6.75 for three hundred weeks from Oct. 23, 1912.

EDW. F. MCSWEENEY.

DANIEL D. DONOVAN.

*Dissenting Opinion.*

I hereby dissent from the findings on page 4 of the report in that the release of Cripps to the Boston Elevated is not binding on Cripps and his dependents.

Cripps had the right to look either for compensation under the act or against the Boston Elevated for his injuries. By taking the money and signing a release he elected his remedy for injuries received and bound thereby himself and his dependents.

I also dissent from the finding that the transaction between Cogan and Pierce was not a *bona fide* one. On the evidence I find Pierce to be the owner of the business of the Cogan Transfer Company on the date of and prior to the accident, and was not individually insured.

I agree with the majority of the committee that the payment of other moneys by the Elevated does not in any way bind Mrs. Cripps or her children in these proceedings.

WILLIAM W. RISK.

*Findings and Decision of Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, May 13, 1913, at 2 P.M., and

affirms and adopts the findings of the committee of arbitration.

The Board finds that on Oct. 23, 1912, John H. Cripps received an injury while in the course of his employment, as a result of which he died on Feb. 12, 1913.

The Board further finds that at the time of the injury John H. Cripps was in the employ of David B. Cogan, who was covered under the Workmen's Compensation Act in a policy of insurance in the Ætna Life Insurance Company, and that an alleged transfer of the business from the said Cogan to one Gilbert D. Pierce was not a *bona fide* transfer.

The Board further finds, at the request of the insurer, that at the time John H. Cripps, the deceased employee, signed the release to the Boston Elevated Railway Company he stated that he wanted \$25, as he thought that was a fair amount, whereas the adjuster offered only \$20, and after some discussion Mr. Cripps accepted that sum and signed the release. At the request of the insurer, a copy of said release is hereto attached.

The Board further finds that the signing of the release by the deceased employee does not operate to deprive the widow and dependent children of their rights under the Workmen's Compensation Act.

The Board further finds that the widow, Julia Cripps, was wholly dependent for support upon the said John H. Cripps at the time of his death, and is entitled to the payment of one-half the average weekly wages of the said John H. Cripps, amounting to \$13.50, that is, to the payment of \$6.75 a week for a period of three hundred weeks from Oct. 23, 1912, the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

*Release and Settlement of Claim.*

*Know all Men by these Presents*, That I, John H. Cripps of Boston in the County of Suffolk and Commonwealth of Massachusetts, being of full age, for the sole consideration of twenty dollars, to me paid by the Boston Elevated Railway Company, a corporation duly established by law, the receipt whereof is hereby acknowledged, do hereby release, acquit and

discharge the said Boston Elevated Railway Company from all claims and demands, actions and causes of action, damages, costs, loss of service, expenses and compensation on account of, or in any way growing out of injuries resulting or to result from accident that occurred on or about the twenty-third day of October, 1912, at or near corner of Southampton and Reading streets by reason of a collision between one of the said company's cars and a team, I being the driver of the said team and do hereby for myself, my heirs, executors and administrators, covenant with said Boston Elevated Railway Company to indemnify and save harmless the said Boston Elevated Railway Company from all claims and demands for damages, costs, loss of service, expenses or compensation on account of, or in any way growing out of said accident or its results.

*Witness* my hand and seal this twenty-third day of October in the year nineteen hundred and twelve.

I have read the above in presence of  
(Signed) JOHN H. CRIPPS. (Seal)

(Signed) PERCY H. TITUS.

Approved for \$20.

(Signed) MAURICE SPILLANE,  
*Claims Attorney.*

Approved for \$

(Signed) R. A. S.,  
*General Attorney.*

Approved for \$20.

(Signed) J. H. NEAL,  
*General Auditor.*

CASE No. 151.

WILLIAM COSTELLO, *Employee.*

JOHN W. PATTERSON, *Employer.*

UNITED STATES CASUALTY COMPANY, *Insurer.*

# PNEUMONIA FOLLOWING INJURY CAUSES DEATH OF EMPLOYEE.

## SISTER ENTITLED TO COMPENSATION AS A PARTIAL DEPENDENT.

The employee, a teamster, while attempting to catch the reins which had fallen from his hands, slipped and fell, a wheel of the wagon passing over his right ankle and fracturing it. He was removed to the hospital and twelve days later died of pneumonia. The medical evidence established a direct connection between the injury and the pneumonia which caused death. It was also shown that a sister of the deceased was partially dependent upon him for support at the time of the injury.

*Held*, that the death of the employee resulted from an injury arising out of and in the course of his employment, and that the sister was entitled to compensation as a partial dependent.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Costello v. United States Casualty Company, this being case No. 151 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, of the Industrial Accident Board, chairman, John A. McCaig, representing the insurer, and Francis M. Phelan, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Thursday, March 27, 1913, at 10 A.M.

William Costello was employed by John W. Patterson, a grocer, 134 South Street, Jamaica Plain, as a teamster. On Feb. 6, 1913, while in the course of his employment, the reins slipped from his hand, and he stepped on the shaft to catch them, slipped and fell, and the wheel of the wagon passed over his right ankle, from which he sustained a compound Pott's fracture.

He was taken to the Boston City Hospital for treatment, and gradually grew worse until on February 18, at 1 o'clock A.M., he died of pneumonia.

The case went to arbitration on the contention of the insurance company that death had not resulted from the accident, and on the question of the degree of dependency.

The Boston City Hospital record plainly indicated the direct connection between the injury sustained on February 6 and the pneumonia which caused his death. In addition to the hospital record Dr. Francis P. Broderick, who had treated Mr. Costello and had seen him previous to his death, said there was absolutely no doubt that the injury of February 6 was the direct cause of the employee's death.

On the question of the degree of dependency, Katherine Costello, the sister of the deceased employee, was shown by the testimony to have received \$6 per week direct from her brother; also he was in the habit of buying her articles of clothing, and of replacing family furniture, and, in fact, she always looked to him as the one to make up any financial deficiency that occurred in the household.

There were two other brothers, Michael, a gardner, who paid her \$6 a week when he worked, which was between Thanksgiving and April. During the interval when he did not work she received nothing from him; it was also testified to that he was not very strong. The other brother, Henry, paid her \$6 a week, but never more than that.

After hearing all the evidence, the committee unanimously found that this employee's death resulted from an injury arising out of and in the course of his employment, and that Katherine Costello, the sister of the deceased, was a partial dependent, and is, therefore, entitled to \$3 per week for three hundred weeks beginning from the date of the injury.

JOSEPH A. PARKS.  
JOHN A. MCCAIG.  
FRANCIS M. PHELAN.

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CASE No. 156.

JOSEPH SILVA, *Employee.*

MERCHANTS AND MINERS TRANSPORTATION COMPANY, *Employer.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

EMPLOYEE UNABLE TO RESUME USUAL EMPLOYMENT. ENTITLED TO COMPENSATION UNTIL ABLE TO WORK.

This employee had been receiving compensation on account of total incapacity for work from Oct. 15, 1912, to Feb. 24, 1913, when the insurer stopped compensation, claiming that he was able to resume his usual work and that he was guilty of feigning, or malingering. The medical testimony not being conclusive, the employee was referred to an impartial specialist for a report as to his condition, the report filed indicating that incapacity would continue for a somewhat indefinite period.

*Held*, that the employee is entitled to further compensation until he is able to work, in accordance with the provisions of the act.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Silva v. London Guarantee and Accident Company, Ltd., this being case

No. 156 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, John T. Coughlin, representing the employee, and N. P. Sipprelle, representing the insurer, being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Fall River, Friday, April 4, 1913, at 9.30 A.M.

Joseph Silva was employed by the Merchants and Miners Transportation Company, Fall River, Mass., as a freight handler. On Tuesday, Oct. 15, 1912, while in the course of his employment, he was trucking a case of goods from the wharf to the steamer, and in going down the gangplank his foot slipped, causing him to fall. His right wrist was caught between the truck and the case, resulting in a compound fracture and cut of the right wrist. He was taken to the Union Hospital for treatment.

The injured man had been receiving compensation for said injury up to and including Feb. 24, 1913, at the rate of \$6 per week, being half his average weekly wage agreed upon at the time of the injury. At this time the insurance company ceased the payments, claiming that the man was then able to resume his usual employment, and that he was feigning.

The case went to arbitration, Silva claiming that he was still unable to work, and also that the average weekly wage as agreed upon was not correct.

Dr. J. P. Jackson testified that the injured man's arm was paralyzed as the result of injury to the median nerve. Dr. Swift of the Union Hospital differed somewhat from Dr. Jackson, and though he would not say that the injured man was feigning, he claimed that the condition of the arm was partly due to the injured man not using it and not adopting the treatment prescribed for him. Dr. Swift suggested that he be sent to Daniel J. Fennelly, M.D., neurologist at the Union Hospital and an expert on nerve diseases. The committee decided to have him examined as requested.

Later, Dr. Fennelly made his report to the Board, describing the case at great length, concluding with the following summary: —



*Diagnosis.* — Injury of upper tracheal plexus involving; ante thoracic, post thoracic, circumflex involving; median muscle spiral or radial. Probable cause, stretch or injury of nerves in shoulder at time of accident, not due to fracture of arm or cutting of nerve at point of fracture.

*Prognosis.* — The condition has been getting slowly a little better and will improve somewhat more, but it is a matter of six months or more; in other words, it is an indefinite thing. It is, however, a complete paralysis and is not a neurosis or feigned condition, as the physical examination shows.

D. J. FENNELLY.

The committee finds, therefore, that the injured man is still unable to resume his usual employment, and that he is entitled to further compensation from Feb. 25, 1913, until he is able to work, in accordance with the provisions of the act.

JOSEPH A. PARKS.  
JOHN T. COUGHLIN.  
N. P. SIPPRELLE.

CASE NO. 159.

JOHN BILIDA, *Employee.*

H. E. FLETCHER COMPANY, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF  
PARTIAL INCAPACITY FOR WORK DEPENDING UPON HIS  
ABILITY TO EARN WAGES. HALF WAGES DUE DURING  
TOTAL INCAPACITY.

The employee, as shown by the evidence, was totally incapacitated for work for a certain definite period of time, and partially incapacitated for another period, being partially incapacitated at the time of the hearing, and the partial incapacity continuing.

*Held*, that the employee is entitled to compensation in accordance with the evidence.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Bilida v. Contractors Mutual Liability Insurance Company, this being case

No. 159 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson, chairman, Daniel Donahue, representing the employee, and George F. Snow, representing the insurer, met at Chelmsford on Feb. 10, 1913, and after being duly sworn heard the parties and their counsel. The committee finds and reports as follows: —

That the employee was injured on July 3, 1912, and that his injury arose out of and in the course of his employment. The injury was caused by a large stone dropping on his right foot, crushing it somewhat and breaking several bones thereto.

The committee finds that he was wholly incapacitated thereby from said July 3, 1912, to Dec. 3, 1912, and that he continued to be *partially* incapacitated therefrom from Dec. 3, 1912, to this date, and is still partially incapacitated thereby; that his average weekly earnings at the time of the injury were \$10 a week; and that there is due him from said insurer, the Contractors Mutual Liability Insurance Company, a compensation of \$5 per week from July 18, 1912, to Dec. 3, 1912, a period of nineteen weeks and five days, amounting to \$98.57, and compensation for partial incapacity at the rate of \$2 per week, from Dec. 3, 1912, to date, April 10, 1913, a period of eighteen weeks and two days, amounting to \$36.57; the total sum due and accruing to date being \$135.14; and that compensation for the partial incapacity shall be paid at the rate of \$2 a week during the continuance of such partial incapacity.

DAVID T. DICKINSON.  
DANIEL J. DONAHUE.  
GEORGE F. SNOW.

CASE No. 160.

ASSAD MALOOF, *Employee.*

EMMONS LOOM HARNESS COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE  
EMPLOYEE ALLEGED. NO EVIDENCE THEREOF. EMPLOYEE  
ENTITLED TO COMPENSATION.

The employee was injured by reason of a fall from a rack, or "horse," used in connection with a varnishing machine, the insurer claiming that the use of this "horse" constituted serious and willful misconduct on the part of the employee. *Held*, that there was no evidence of serious and willful misconduct, the employee being entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Assad Maloof v. American Mutual Liability Insurance Company, this being case No. 160 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, A. A. Korbey, 107 Hampshire Street, Lawrence, Mass., representing the employee, and G. Hawthorne Perkins, Lowell Textile School, Lowell, Mass., representing the insurer, heard the parties and their witnesses in the City Council Chamber, City Hall, Lawrence, Mass., on Monday, April 14, 1913, at 10.30 A.M.

Assad Maloof, employed by the Emmons Loom Harness Company, who are insured by the American Mutual Liability Insurance Company, average weekly earnings \$10.80 per week, on Monday, Dec. 2, 1912, at about 11 o'clock in the morning, being at work in the varnish room, was injured by the projecting arm of a wooden and iron frame, called a horse, which cut him under the right arm. The insurance company deny that this accident arose out of or in the course of Mr. Maloof's employment, and allege that his accident may be due to his serious and willful misconduct, as provided in section 2, Part

II. of the Workmen's Compensation Act. The amount of total disability agreed upon was four weeks' duration.

It appears that Mr. Maloof's work requires him to place harnesses on a rack or frame, so that they may be put through the varnishing machine. This rack or frame is on a platform, which runs on rollers, the platform being about 6 inches from the floor, and consists of two uprights, with a number of projecting iron arms, on which harnesses are hung; after one of these racks or horses is filled with harnesses, it is necessary to get the approval of the section hand or foreman, so that the machine through which they are to pass may be adjusted.

The injured employee, Maloof, testified under oath that he stood on a rail which is 9 inches high from the ground, to see where the section hand was, to ask him what kind of work he wanted to put on the machine; that he took the rack or horse around the machine, pushed it and returned, and when he returned slipped and fell onto an empty horse, which he grabbed on one side, and the other side hit him under the right arm, inflicting a wound which disabled him for four weeks. Mr. Maloof has been employed in this mill for thirteen years and never was hurt before this time.

Hymie Cohen, a witness who testified for the insurance company, stated that on December 2 he was 3 or 4 feet away from Maloof, saw him go up to this rack or horse, and saw him fall down; that he saw Maloof stop his machine to let the last harness go by and he then pushed away the horse and climbed up the first bar and swung to and fro, turning his head from side to side and smiling; that he did not know what Maloof's purpose was in looking around; that as Maloof was coming down from the horse he slipped from the first bar and got caught under the arm.

Charles Barron of Methuen, the section hand or assistant boss, testified that all he knew about the accident was that Maloof came to him and told him he wanted to go home; that he was "sick;" that these horses or racks in the varnish room are used to put harnesses on, and that he did not order the men not to stand on the horses; if they wanted to signal the boss he never had forbidden them to do it; that these racks or horses are 6 feet high and that sometimes, if he wants to see across the room, he might stand on a rack himself; that it was

necessary, before Maloof put the harnesses through the machine, that he should be there to set the machine right; that Maloof has been working for him about twelve years; that he is all right; he never saw him fooling around and never had any complaints about his fooling around.

In this case it appears that the injured employee, Maloof, while engaged in his usual work, did climb on one of the racks or horses, and while there is a conflict as to the exact manner in which he received his injury, there was no question that he was injured at about the time stated. There is no evidence produced by the insurance company to show that the employee was not in the course of his employment, or that the injury did not arise out of his employment. There is no evidence given which would substantiate the claim that this was serious and willful misconduct on the part of the employee as provided for in section 2 of Part II. of the Workmen's Compensation Act.

*Held*, that Assad Maloof, employed by the Emmons Loom Harness Company, on Dec. 2, 1912, received an injury arising out of and in the course of his employment which disabled him for four weeks, and that he is therefore entitled to one-half of his average weekly wage of \$10.80 per week, or \$5.40 per week, for two weeks, or a total of \$10.80.

EDW. F. MCSWEENEY.

G. HAWTHORNE PERKINS.

AZAR A. KORBAY.

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CASE No. 162.

JOHN G. CLEMENTS, *Employee*.

SMITH & ANTHONY, *Employer*.

TRAVELERS INSURANCE COMPANY, *Insurer*.

HEART TROUBLE HASTENED BY INJURY. IMPARTIAL MEDICAL  
EXPERT REPORTS THAT THIS, INDEPENDENT OF INJURY,  
WOULD HAVE INCAPACITATED HIM WITHIN TWO YEARS.  
COMPENSATION AWARDED ACCORDINGLY.

The employee, a carpenter, was injured while lifting a stove, finally going to the Massachusetts General Hospital for treatment. The diagnosis indicated an enlarged heart and suspected tuberculosis. There was no hernia or other objective signs of the injury. It was agreed that the injury arose out of and in the course of his employment and that incapacity for work followed the injury. The only question involved was the extent of the incapacity for work

due to the injury. The impartial medical expert reported that pre-existing heart trouble would have compelled the employee to give up heavy manual work within six months to two years.

*Held*, that the employee was entitled to compensation for a period of one hundred and two weeks from Oct. 8, 1912, the fifteenth day after the injury.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John G. Clements v. Travelers Insurance Company, this being case No. 162 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Hon. Charles A. Dean of Wakefield, Mass., representing the employee, and William C. Prout, Esq., 60 State Street, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Wakefield, Mass., on Monday, March 31, 1913, at 10 A.M.

John G. Clements, carpenter, age, forty-three, average weekly wage \$13.50, at about 10.30 o'clock on the morning of Oct. 8, 1912, was lifting a stove with another man. When the stove was half way lifted, Clements felt something give on his side, near his abdomen. He worked all that day and the next and felt much pain during the night. During the following day he went to Dr. Woodbury of Wakefield, who gave him some pills and told him to take linament and rub it on the injured part, which Clements did, without any satisfactory result. He went back to work for two or three days, then remained away from employment for two weeks, and subsequently went back to work, at which he continued until the last Saturday in December, 1912, since which date he has been unable to work.

On Dec. 31, 1912, examination was made at the Massachusetts General Hospital, where he had come for relief of his right-side abdominal pain, dyspnoea and weakness, which showed that the man had an enlarged heart and suspected tuberculosis.

At the arbitration hearing held in this case it was developed that Clements was suffering from weakness of the heart and from tuberculosis of the lungs. There was no hernia or other objective sign of the injury.

It was agreed that his injury arose out of his employment and that incapacity for work followed the injury.

It was agreed by the arbitrators that at the time of the arbitration hearing Clements was unable to work.

As to whether Clements' present condition is attributable to the injury, and the probable extent of resulting disability, the arbitrators were unable to come to an opinion without competent medical advice, and by agreement the matter was referred to Dr. Elliott P. Joslin of 81 Bay State Road, Brookline, Mass., for an examination and a report as to how far the accident had contributed to the resulting disability, and to what extent.

On May 12, 1913, Dr. Joslin reported as follows: —

I examined Mr. John G. Clements at your suggestion upon May 9, 1913.

In my opinion Mr. Clements had trouble with his heart before the date of the accident, Oct. 8, 1912, and I believe that even if the accident had not happened, his condition would have gradually grown worse, so that at the outside, he would have been obliged to give up heavy manual work within a comparatively short period, — six months to two years at the very latest. I believe that the progress of his heart trouble was hastened by the injury and the worry incidental thereto, so that now there is no question but that he is completely incapacitated for manual labor. I should say, therefore, that the accident was contributory to his present disability, but that the present disability would have occurred, independently of the accident, within a period of six months to two years.

The arbitrators find that on Oct. 8, 1912, the condition of John G. Clements was such that within a period of two years he would have been unable to have performed his labor. As the result of an injury received on that date, permanent disability has been anticipated by a period of two years, and the arbitrators find, therefore, that John G. Clements is entitled, as a result of this injury, to disability payments of one-half his regular wage, \$13.50, or \$6.75 per week, for a period of one hundred and two weeks from Oct. 8, 1912, a total of \$688.50, and that this constitutes the whole liability of the Travelers Insurance Company for the injury arising out of his employment, occurring on Oct. 8, 1912.

EDW. F. MCSWEENEY.

WILLIAM C. PROUT.

CHARLES A. DEAN.

CASE No. 163.

JOHN BORIS, *Employee.*

G. W. HERRICK SHOE COMPANY, *Employer.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

EMPLOYEE RECEIVED A PERSONAL INJURY BY POISONING AS  
THE RESULT OF THE USE OF A LEATHER CLEANSER.  
COMPENSATION AWARDED.

The employee was employed as a leather cleanser by a Lynn shoe firm, the cleanser bringing out sores on his hands which gloves did not prevent. Other employees used the cleanser without injurious results. A specialist in dermatology testified that the cleanser poisoned the employee, causing an acute inflammation of the skin, accompanied by blisters which frequently broke and left the broken places sore and raw.

*Held*, that this was a personal injury arising out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Boris v. Frankfort General Insurance Company, this being case No. 163 on the files of the Industrial Accident Board, reports as follows:—

The arbitration committee, consisting of Dudley M. Holman, chairman, Philip A. Kiely, representing the employee, and Horace G. Pender, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Lynn, Mass., on Thursday, April 3, 1913, at 10 A.M.

We find that John Boris, living at No. 4 Smith Street, Lynn, was employed by the Herrick Shoe Company of Lynn from August, 1911, to about Dec. 1, 1912; that he used a cleaner for use on leather which was furnished him by said Herrick Shoe Company. It affected his fingers and he spoke to the foreman, Mr. Spinney, and told him that the cleaner was too strong and was bringing out sores on his fingers. This was about the latter part of August. Little or no attention was paid to his complaints, and the foreman told him that the other employees were using the same cleaner without any injurious effects. He finally was compelled to wear gloves, but his hands constantly kept getting worse, and he went to Dr. Jenkins, who at once sent him to Dr. Bangs who is a specialist in dermatology. Dr.



Bangs treated Boris and testified that his fingers had the evidence of an acute inflammation of the skin, thickening of the skin, and little groups of vesicles or points under the skin where it had run together causing large blisters, and these had broken, and places on the sides of the fingers were raw. He had bandages put on the fingers. The fingers of both hands were affected, one worse than the other. Poisoning is an individual characteristic; that is, some people are easily poisoned with ivy, while others can handle it with no effect whatever. This cleaner so affected Boris, while not affecting the other employees, that there was nothing in the condition of his hands that was contagious, and disability had existed a number of weeks.

We find, therefore, on all the evidence that John V. Boris was employed by the G. W. Herrick Shoe Company of Lynn; that he received personal injuries arising out of and in the course of his employment; and that he is entitled to five weeks' compensation at one-half of his average weekly wages during the period of his total incapacity amounting to \$30.25.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.  
PHILIP A. KIELY.

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CASE No. 164.

LOTTIE C. RAYMOND, DEPENDENT AND WIDOW OF WILLIAM  
H. RAYMOND, *Employee*.  
R. E. HENDERSON & Co., *Employer*.  
UNITED STATES CASUALTY COMPANY, *Insurer*.

ETHER PNEUMONIA FOLLOWS SURGICAL OPERATION. DEPEND-  
ENT WIDOW ENTITLED TO COMPENSATION.

The employee received an injury from a saw, making a surgical operation necessary, ether pneumonia being the immediate proximate cause of his death.  
*Held*, that the dependent widow was entitled to compensation.

*Report of Committee of Arbitration.*

The committee of arbitration appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William H.

Raymond v. the United States Casualty Company, this being case No. 164 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson, Esq., chairman, Arthur A. Forness, Esq., representing the employee, and Charles M. Cram, Esq., representing the insurer, being duly sworn, heard the parties and their witnesses at the City Council Chamber, City Hall, Beverly, Mass., Thursday, April 17, 1913, at 10.30 A.M.

The committee finds that the deceased employee received an injury on March 5, 1913, and that said injury arose out of and in the course of his employment. The injury occurred while Raymond was attempting to call the foreman to notify him that the water was not circulating through the engine. He stepped back and placed his arm on top of a saw, receiving a very serious cut which rendered a surgical operation necessary, ether pneumonia being the immediate proximate cause of his death. The operation was performed soon after the injured employee had taken his breakfast, whereas ordinarily it is safer to have such an operation performed while the employee is fasting. In this case it was impossible to make these preparations because of hemorrhages, which made an immediate operation imperative.

The committee finds that the average weekly wage of this employee was \$14, and that the widow, Lottie C. Raymond, is entitled to a weekly payment of \$7 for a period of three hundred weeks from the date of said injury.

DAVID T. DICKINSON.  
ARTHUR A. FORNESS.  
CHARLES M. CRAM.

CASE No. 165.

ADAMO BRONZETTI, *Employee.*

ROBB ENGINEERING COMPANY, LTD., *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

RIGHT TO WITHHOLD ADDITIONAL COMPENSATION FOR LOSS OF VISION FOR A YEAR, PENDING THE POSSIBLE RESULT OF AN OPERATION, DENIED. COMPENSATION AWARDED THE EMPLOYEE.

The insurer claimed that it was within its rights in withholding the additional compensation provided for by section 11 (b), Part II. of the act, for the reduction to one-tenth of normal vision in either eye with glasses, pending the possible favorable outcome of an operation a year hence. Medical evidence indicated that the operation, if performed, would leave less than one-tenth of vision.

*Held*, that the employee is entitled to the additional compensation provided for the loss of vision.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Adamo Bronzetti v. Employers' Liability Assurance Corporation, Ltd., this being case No. 165 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, H. V. Brady, representing the employee, and Edward L. McManus, representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Tribune Building, South Framingham, Mass., on Thursday, April 3, 1913, at 9.30 A.M.

Adamo Bronzetti, thirty-six years old, average weekly wages \$14.85, employed by the Robb Engineering Company, Ltd., who are insured under the Workmen's Compensation Act by the Employers' Liability Assurance Corporation, Ltd., while working on a punch used on a boiler plate, on Friday, Aug. 23, 1912, at 1.30 P.M., the die became clogged with chips and forced the punch off the center, breaking a piece out of the die, which struck Bronzetti, cutting his nose and face and striking flat upon the eye. The employee, Bronzetti, was disabled

from work for a period of fifteen weeks, after which he returned to work. He received compensation at one-half his average weekly wages for the full period of his legal disability.

The point at issue is the additional compensation provided in paragraph (b), section 11, Part II. of the Workmen's Compensation Act.

It is agreed that as a result of an injury arising out of his employment, Bronzetti received a traumatic cataract, which has deprived him of the sight of his right eye. The insurance company hold that the additional compensation provided for in section 11, Part II. of the act, for the loss of one eye, should not be paid, because of its claim that in about a year's time the cataract which was a result of this blow would have grown "ripe" and in a position where the cataract might be operated on and removed. If this operation could be performed with success the injured man is not now entitled to the additional compensation provided in the act for the loss of an eye; the insurance company claimed that if after the cataract was removed by operation, and Bronzetti had then less than one-tenth normal vision with glasses, the insurance company would then pay the fifty weeks' additional compensation, and should not under the circumstances be compelled to pay the fifty weeks' additional compensation at this time.

Dr. W. H. Regan, 15 Beacon Street, Boston, a specialist in eye diseases, testifying for the insurance company, said that cataracts are sometimes absorbed and sometimes operated on; that the chances of this eye assuming its normal functions as before the accident, without an operation, were very remote; that this cataract would not be "ripe" or hard enough to have an operation performed upon it for about a year; and at the present time the sight of Bronzetti's eye was less than one-tenth of normal.

Dr. Jessaman, 30 Hollis Street, Framingham, a specialist in eye diseases, testifying for the injured employee, said he examined the man five days after the injury and found a large amount of organized material in the vitreous chamber of the eye; while a small amount of organized material in the vitreous chamber might be absorbed, there was so much of it when he examined Bronzetti on September 1, that in his opinion it

might not all be absorbed. He could not tell how much of this organized material there was there now, as the white opaque crystalline lens is all that is now visible; the iris is normal and reacts to light and there is slight perception. In his opinion, because of the organized material in the vitreous chamber, which is not likely to be absorbed, there would be less than one-tenth vision with glasses in the eye even after an operation for the cataract.

Dr. Regan, after hearing the testimony of Dr. Jessaman, said, assuming that there was the amount of organized material in the vitreous chamber as stated by Dr. Jessaman, even though the man were operated on and the cataract removed, there would still be another curtain in front of the vision.

In this case it appears to the arbitrators that if it had been a simple case of traumatic cataract, without the complications in the vitreous chamber of the eye, described by Dr. Jessaman, the injured employee, Bronzetti, would still be entitled to the fifty weeks' additional compensation provided by paragraph (b), section 11, Part II. There is nothing in the law that requires an injured workman, after losing the sight of an eye, due to an injury arising out of his employment, to be deprived of additional compensation for loss of his eye for more than a year in the possibility that an operation at the end of that period would restore his sight to more than one-tenth of normal vision with glasses; but in any case, the probabilities are that even with this operation there would be no recovery of the sight to more than one-tenth of normal at the end of a year after the time of injury or at any other time.

*Held*, that under paragraph (b), section 11, Part II. of the Workmen's Compensation Act, Adamo Bronzetti is entitled to an additional compensation of one-half his weekly wages of \$14.85, or \$7.43 a week for a period of fifty weeks from the date of injury.

EDW. F. MCSWEENEY.  
EDWARD L. MCMANUS.  
HARRY V. BRADY.

CASE No. 166.

MICHAEL SHEEHAN, *Employee.*

MERCHANTS AND MINERS TRANSPORTATION COMPANY, *Employer.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

INSURER SUSPENDS COMPENSATION. EMPLOYEE FOUND TO BE  
INCAPACITATED FOR WORK AND COMPENSATION AWARDED  
IN ACCORDANCE WITH EVIDENCE.

The insurer suspended compensation on the ground that the injured employee was not taking proper care of himself, and that he was frequently in an intoxicated condition. The evidence failed to substantiate the claim, the hospital physician testifying that the employee received proper and regular treatment at the hospital, and testimony as to intoxication being lacking.

*Held*, that the employee was entitled to further compensation on account of continued incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael Sheehan v. London Guarantee and Accident Company, Ltd., this being case No. 166 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, N. P. Sippelle, representing the insurer, and John Riley, representing the employee, being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Fall River, Friday, April 4, 1913, at 2 P.M.

Michael Sheehan, employed by the Merchants and Miners Transportation Company of Fall River as a freight handler, was injured Monday, Oct. 14, 1912, while trucking pieces of iron pipe from the Steamship "New Orleans" to the dock, a piece rolling from his truck and striking his right leg in such a manner as to break it half way between the knee and ankle. He was sent to the Union Hospital for surgical treatment.

The injured man received compensation at the rate of \$6 per week up to and including March 3, 1913, when the insurance

company refused to pay any further compensation on the ground that the injured man was not taking proper care of himself, and that he had from time to time become intoxicated. The evidence submitted failed to substantiate these charges, although it was proven that the injured man was living in a very unhealthy neighborhood.

Dr. McCarthy, who was attending the injured man at the hospital, testified that in his opinion the man was not able to work, and in answer to the question as to how long it would take a healthy man to recover from such an injury as Sheehan had sustained, he said it would take six months. It was also shown that the injured man's leg had been bandaged up that same morning at the hospital. The insurance company's representative, Mr. Avery, agreed that the injured man was entitled to further compensation.

The committee finds that said Michael Sheehan is still incapacitated as a result of the injury sustained Oct. 14, 1912, and is entitled to compensation until he recovers sufficiently to resume employment.

JOSEPH A. PARKS.  
JOHN RILEY.  
N. P. SIPPRELLE.

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CASE No. 168.

MARY LATA, *Employee.*

LUDLOW MANUFACTURING ASSOCIATES, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF INCAPACITY FOR WORK DUE TO HIGHLY NERVOUS STATE FOLLOWING INJURY. IMPARTIAL PHYSICIAN FILES REPORT.

The employee claimed further compensation on account of dizziness and a highly nervous condition which followed the injury and incapacitated her for work. An impartial specialist filed a report in which he found that she was now incapacitated for work and that the incapacity would continue, as a result of the highly nervous state and delusions from which she was suffering.

*Held*, that the employee was entitled to compensation to a definite future date, subject to revision by the Industrial Accident Board.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary Lata v. American Mutual Liability Insurance Company, this being case No. 168 on the files of the Industrial Accident Board, reports as follows:—

The arbitration committee, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, W. J. LaFrancis, representing the employee, and H. B. Whiting, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Springfield, Mass., on Saturday, April 12, 1913, at 10 A.M., this case being heard at the above place by agreement of the parties.

It appeared in evidence that the employee was injured on the 13th of November, 1912, while in the employ of the Ludlow Manufacturing Associates of Ludlow, Mass.

There was no question in the case that compensation under the act was \$4 per week, and it had been paid to the employee up to the 3d of March, 1913. The only question involved was the extent of her disability, and for how long a time compensation should be paid to her, if at all.

Dr. Philip J. Kilroy of Springfield testified, and we find his testimony to be true, that when he examined her on the 12th of April there was no evidence of any organic disease, and there was no objective evidence of any injury, no scar, organs sound, moderately well nourished, respiration, pulse and temperature normal; that she did, however, suffer from dizzy spells and was in a highly nervous state which incapacitated her for working; that, while there was no organic or physical trouble, she was in such a state of mind that from the 3d of March up to the 12th of April she was incapacitated, and that this condition would continue for some time unless influenced in some way so that she could throw off the delusions under which she was suffering, which might fairly be said to have resulted from the physical injury inflicted upon her at the time of the accident.

We therefore find that she is entitled to compensation from



the 3d of March to the 5th of May, a period of nine weeks, at \$4 a week, amounting to \$36. This award, however, is subject to future revision by the Industrial Accident Board if the condition of the employee warrants such action, in accordance with section 12, Part III. of the Workmen's Compensation Act.

JAMES B. CARROLL.  
WALTER J. LAFRANCIS.  
H. B. WHITING.

CASE No. 169.

CARLO AMOROSINO, *Employee*.  
FORE RIVER SHIPBUILDING COMPANY, *Employer*.  
MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF  
TOTAL INCAPACITY FOR WORK. NO PAYMENT DUE FROM  
INSURER TO PHYSICIAN CALLED AFTER FIRST PHYSICIAN  
HAD RENDERED PROPER MEDICAL SERVICES.

Two questions were involved in this case, — the right of the employee to further compensation on account of his total incapacity for work beyond the period during which the insurer acknowledged liability, and the right of the employee to the payment of a bill for medical services rendered by a second physician, after the first physician had properly set and treated the fracture, the evidence indicating that the change of physicians had delayed recovery.

*Held*, that the employee was entitled to compensation during his incapacity for work as a result of the injury, and that no payment is due from the insurer by reason of the medical services rendered by the second physician.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Carlo Amorosino v. Massachusetts Employees Insurance Association, this being case No. 169 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, William H. Sullivan, representing the employee, and Sidney Curtis, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial

Accident Board, Pemberton Building, Boston, Monday, April 21, 1913, and reports as follows:—

The committee finds that the employee, a man of thirty-two years of age, received an injury arising out of and in the course of his employment with said employer on Jan. 24, 1913.

The injury was caused by a truck running over his left hand, thereby fracturing the metacarpal bones of his thumb and first finger.

His average weekly wages at the time of the injury were \$9. The committee finds that he was wholly incapacitated for work as a result of the injury for a period of twelve weeks following said injury, viz., up to April 18, 1913, and that he was entitled to compensation at the rate of \$4.50 a week for a period of ten weeks; that he has been paid by said insurer on account of his compensation \$13.50, and that there is now due him a final balance on said account of \$31.50; and that all incapacity resulting from said injury ceased on April 18, 1913.

The committee further finds that reasonable and proper medical attention and services were furnished by the insurer to said employee after the injury, and that the fractured bones had been well set and cared for by the physician furnished by the insurer; that he then, three days after the fracture had been properly set and treated, went to another physician who attended and treated him; that by reason of this change of physicians, breaking the continuity of treatment as first established, the recovery from the injury was hindered and delayed.

The committee, therefore, finds that no payment is due from the insurer by reason of the medical services rendered by the second physician.

DAVID T. DICKINSON.  
SIDNEY CURTIS.

*Dissenting Opinion.*

I hereby dissent from so much of the finding of the majority of the committee of arbitration as refers to the medical treatment of the injured workman and the charge made for services rendered to him by the physician employed by him when, as he claims, he was refused treatment by the doctor in the employ of the employer.

The Workmen's Compensation Act requires that "reasonable medical and hospital services and medicines when they are needed" shall be furnished by the association to the injured employee during the first two weeks after the injury. Whether such services and medicines have been furnished is a question of fact to be decided by the committee of arbitration after hearing all the evidence, and with the burden of proof on the association, and with each case to be decided on its own peculiar facts. In this case all the evidence tended to prove that after setting the broken bones of the hand of the injured man, Dr. Blanchard refused to treat him further until after the expiration of two or three days, although said employee came to him twice, complaining of great pain and asking for assistance and relief. I find as a fact that the medical service rendered by Dr. Blanchard was not reasonable; that the injured man was justified in consulting Dr. Bommarito; that Dr. Bommarito's treatment was proper and that he ought to be paid for his services a reasonable compensation, which I believe to be \$25.

WILLIAM H. SULLIVAN.

CASE No. 172.

PIETRO CUOCO, *Employee*.

FRED T. LEY & CO., INCORPORATED, *Employer*.

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

#### EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY FOR WORK.

The employee received an injury while engaged in digging a trench, being buried to the waist. Before his incapacity for work ended he left for Italy and then claimed further compensation. Evidence indicated that he would be unable to perform his usual work for a period of five weeks after the date of his departure for Italy.

*Held*, that the employee was entitled to further compensation on account of incapacity for work.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Pietro Cuoco v.

Contractors Mutual Liability Insurance Company, this being case No. 172 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Joseph T. Zottoli, representing the employee, and Arthur W. Joslin, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Monday, April 7, 1913, at 10 A.M.

Pietro Cuoco was employed by Fred T. Ley & Co., Incorporated, general contractors, 499 Main Street, Springfield, as a laborer. While in the course of his employment on Monday, Aug. 19, 1912, he was injured while digging a trench, which caved in on him, burying him to his waist, and he sustained an injury to his left hip, resulting in bad contusions, and on account of which he was unable to follow his usual occupation.

He received compensation up to and including Nov. 18, 1912, at which time he left for Italy. The evidence indicated that his disability would end Dec. 23, 1912.

The committee finds that said Pietro Cuoco is entitled to five more weeks' compensation, dating from November 18 to Dec. 23, 1912, at the rate of \$6 per week, half his average weekly earnings.

JOSEPH A. PARKS.  
ARTHUR W. JOSLIN.  
JOSEPH T. ZOTTOLI.

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CASE No. 178.

ANTONIO BARTUCCINI, *Employee.*

WORONOCO CONSTRUCTION COMPANY, DIVISION II., *Employer.*

ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

NOT ENTITLED TO COMPENSATION. NO EVIDENCE TO INDICATE THAT EMPLOYEE WAS ENTITLED TO ANY COMPENSATION.

The evidence introduced at the hearing indicated that the employee was not entitled to any compensation.

*Held*, that the employee was not entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Antonio Bartuccini v. Aetna Life Insurance Company, this being case No. 178 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Augustine Airola, representing the employee, and Scott Adams, representing the insurer, heard the parties and their witnesses at the Equity Court Room, Hampden County Court House, Springfield, Mass., on Thursday, May 8, 1913, at 10 A.M.

The claimant was represented by Vincent Brogna, Esq., of Boston, and the respondent by T. S. Glenn, Esq., of Springfield.

After hearing all the witnesses offered and admitting and considering all the evidence introduced by both parties to said matter, said committee of arbitration after consideration decided that the claimant was entitled to no compensation from the respondent or its insurer under the provisions of chapter 751 of the Acts of 1911, or other acts in amendment thereof or in addition thereto.

JAMES B. CARROLL.

AUGUSTINE AIROLA.

SCOTT ADAMS.

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CASE No. 180.

WILLIAM HURLE, *Employee.*

PLYMOUTH CORDAGE COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

PERMANENT TOTAL INCAPACITY FOR WORK CAUSED BY TOTAL LOSS OF VISION. ATROPHY CAUSED BY NOXIOUS GASES, RESULTING IN OPTIC NEURITIS. THIS IS A PERSONAL INJURY UNDER THE WORKMEN'S COMPENSATION ACT.

The employee, a foreman in the producer gas plant of the Plymouth Cordage Company, was required, in connection with his duties, to see that the furnaces which produced the gas were properly supplied with coal, burning evenly, at

the right color, and to prevent incandescent spots caused by a forced draught. It was in evidence that a man, in the performance of this task, was obliged every three minutes to keep the water-sealed cover of one of these holes open twenty seconds to look at the fire. The ordinary inside heat of the furnace was 15,000° F. The heat coming through these holes burns the hair and eyebrows. In addition to the heat and the resulting glare, certain noxious gases escaped when the holes were opened, such as carbon monoxide, carbon dioxide, carbon sulphite and other impurities contained in anthracite coal. There was some medical evidence of "tabes," but this was withdrawn by the insurer at the hearing before the committee of arbitration, the medical evidence of the two specialists called, one for the employer and the other for the employee, testifying that in their opinion the employee's blindness was caused by the poisonous gases and was not due to syphilis.

*Held*, that the employee received an injury arising out of and in the course of his employment, and that he is entitled to payment on account of total incapacity for work, in amount \$3,000, and to additional payments for loss of vision, in amount \$952.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Hurle *v.* American Mutual Liability Insurance Company, this being case No. 180 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Frederick A. P. Fiske of 10 Tremont Street, Boston, Mass., representing the employee, and John H. Harwood, Esq., of 703 Exchange Building, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Thursday, May 1, 1913, at 10 A.M., and a meeting of the arbitrators and lawyers in the case was held on Saturday, May 24, 1913, at 10 A.M.

William Hurle, age forty-seven, was employed by the Plymouth Cordage Company at its factory at Plymouth, Mass. (this company being insured under the Workmen's Compensation Act by the American Mutual Liability Insurance Company). During the last five years Hurle worked in the producer gas plant of this company, since October, 1910, being

foreman of this department. During the last twelve months of Hurle's service his average weekly wage was \$19.04. In the gas producer house are furnaces to make gas to run explosive engines. These furnaces produce gas by the burning of pea coal from a forced draught, each of the furnaces (there being 5) being cylindrical structures, 11 feet in diameter, 14 feet high, sealed with water. The coal which makes the gas is introduced through hoppers, arranged to prevent the escape of gas and the introduction of air. This gas is forced out of the furnaces and thence conducted by a pipe to an engine or engines into a retort in another building by its own pressure and the pressure of the forced draught through various purifying processes. On top of these cylinders in which the gas is made are 10 holes varying from  $2\frac{1}{2}$  to  $3\frac{1}{2}$  inches in diameter, through which the operator watches the fire by opening a cover sealed by water and looking into the fire. In performance of his duties as foreman, Hurle was employed continuously to see that those furnaces were properly supplied with coal, burning evenly, at the right color, and to prevent incandescent spots caused by burning of the fire by forced draught. He was provided with a poker 17 feet long, which, when necessary, he inserted through one of the holes in the top of the cylinder and with it covered up any part of the coal that was burned through or too bright. Mr. Skakle, chief engineer of the Plymouth Cordage Company, testified that a man doing his duty was obliged, every three minutes, to keep the water-sealed cover of one of these holes open twenty seconds to look at the fire. When found needful, the workman opens a poker-hole to take care of the furnace fire, and must look to see the particular part of the fire to put the poker in. This takes about ten to twenty seconds. A workman's field of vision covers one-third of the furnace by looking through any one hole. When necessary, workmen open the hole and use the poker, correcting the fire, taking, probably, one minute to do this, on an average. The ordinary inside heat of the furnace was 15,000° F., described by Mr. Skakle as between cherry red and a hot poker in color. Employees wear gloves, because otherwise their hands would burn, and occasionally, when poking the fire, the heat coming up from these holes burns the

employees' hair and eyebrows. Sometimes when employees are bending down to look at the fire through these holes, their heads come within a foot and a half to two feet from the top of the furnace, and at such a time it is possible the hair and eyebrows may be singed. During the course of the employee's labor he would have to pass his head over one of these holes, in the ordinary course of events, from six to seven times an hour, or sixty to seventy times a day.

Regarding the light, when the holes became incandescent, that is, when air was admitted, the light from each of the holes was described as being equal to the glare of an incandescent lamp at 110 candle power, and these holes in the furnace became incandescent and gave forth a light equal to 110 candle power from about five to seven times an hour, or from fifty to seventy times a day. In other words, seventy times a day the workman passed his head over these holes and felt the effect of the heat, and about the same number of times daily one of the holes over which the workman passed his head became incandescent and the glare was felt by him. In addition, when these holes were opened they gave forth certain by-products of coal being made into gas, such as carbon monoxide, carbon dioxide, carbon sulphite and other impurities contained in anthracite coal.

It appears from the testimony that sometime during the latter part of July or in the early part of August, probably in July, Hurle began to notice that his eyesight was failing noticeably, and on Aug. 10, 1912, he consulted Dr. J. Holbrook Shaw, an oculist and aurist, with offices at Plymouth and Boston. After an examination of his eyes Dr. Shaw found that in Hurle's left eye he had only about one-fiftieth of normal vision, which was not improved by glasses, and in the right eye he found that he had, without glasses, about one-half of normal vision. With a convex, spherical lens glass he got two-thirds of his normal vision. Dr. Shaw found Hurle's personal history negative. At the time of his visit Hurle told him he had got a cinder in his left eye sometime previously, and had used a good deal of tobacco. Dr. Shaw examined and found the field of vision contracted, with a central defect in the left eye and both the nerves very pale. He examined Hurle's color sense



roughly, without using a perimeter, with a piece of cotton on a pencil, the result of his observation being that the condition of his eye at that time negatived the idea that the condition was caused by the use of tobacco. After this examination Hurle's sight failed progressively. He continued at his employment from August 10, when he first consulted Dr. Shaw, until October 21, when he worked for the last time, being taken off the pay roll of the Plymouth Cordage Company on Oct. 26, 1912. Towards the end of Hurle's employment his sight failed so rapidly that his boy came with a lantern to help him home after work. Mr. Skakle, chief engineer in charge, stated that as far as he knew Hurle had been able to perform his work up to October. It appeared in the testimony that Hurle had bought a pair of reading glasses in February, 1911, from Mr. Charles Everson of Plymouth, but these glasses were acknowledged to be necessary only because of the shortening of near vision, caused by the physiological changes in Hurle's eyes due to his age. Hurle and some of his fellow workmen in the gas producer house testified that during the course of their employment they frequently had headaches which centered in the forehead, immediately over the eyes, and were occasionally nauseated. Frequently, when poking the furnaces, the glare would cause them to be blinded temporarily, so that they would be obliged to shut their eyes, and on opening them would find their vision obscured by black spots, but this effect would pass away in a short while.

Dr. W. F. O'Reilly, an eye specialist, testifying for the injured employee, said he examined Hurle on March 5, 1913, and found him blind in both eyes, the condition of the eyes being due to structural changes, the principal one being the atrophy of the optic nerve, the nerve being dead. At this time Hurle could not see and was only able to perceive light in the right eye. In answer to a hypothetical question which gave the agreed facts as to Hurle's history, the length of time he had worked in this producer gas building, the character of the work, considering the glare, the heat, and the fumes from the holes in the furnace, Dr. O'Reilly gave as his opinion that Hurle's blindness was due to poisoning by the gases and other impurities that go with the gases, the heat and light contributing by

causing irritation of the delicate parts of the nerves. He further stated that carbon monoxide, carbon dioxide, ammonia, sulphur, free nitrogen and other compounds, when introduced into the system, have a peculiar affinity for the optic nerve, and may produce acute neurosis and result in atrophy. In this case, these gases entering the system had brought about the poisoning of this nerve, resulting in blindness. Dr. O'Reilly also gave it as his opinion that Hurle's blindness is not in any way due to any traumatic injury, — that is to say, to any blow, such as a cinder on the outside of the eye, — his blindness being wholly due to some cause operating on the nervous system within the body.

Dr. John Morgan, 39 Huntington Ave., Boston, an eminent eye specialist, was called by the insurer. He examined Hurle in November, and on the day before this hearing, April 30. He agreed that the cause of Hurle's blindness was atrophy of the optic nerve. Among the causes of this atrophy, he would consider the nature of Hurle's work. In his opinion, the inhalation of gases would cause the atrophy by influence upon the condition of the blood, causing blood changes. While such an atrophy might be gradual, in this case, considering the fact that Hurle had worked in the gas house for five years, and had never noticed any trouble with his eyesight until August, 1912, and during the next sixty days became practically blind, it would naturally follow as a reasonable conclusion that there was an acute inflammation of the optic nerve, followed by atrophy. It was possible, in Dr. Morgan's opinion, that Hurle might have overlooked a gradual failure of his sight, which might not have failed sufficiently to attract his attention until August; but allowing that Hurle's eyesight was imperfect or unequal in August, to have practically lost his sight in sixty days there must have been some acute attack to account for it. In Dr. Morgan's opinion there are many cases of optic neurosis or atrophy of the optic nerve in which the cause is unknown. He did not believe that Hurle had a tumor of the brain, which was a cause of optic atrophy. Dr. Morgan believed that when Hurle got an especially strong whiff of the gas, it exercised a bad influence and would cause the pains in his head. The fact that Hurle was fitted for glasses a year before would not indi-

cate anything serious the matter with his eyes other than could be accounted for by his age. When Hurle came to Dr. Morgan for examination, November 26, he was totally blind in his left eye; could see fingers at 6 feet with the right eye, and was totally blind the last of April. Given that progressive blindness in this period, if eyesight was perfect until August and failed as rapidly as he alleged, it was due to an acute attack of optic neuritis, or acute inflammation of the optic nerve. The cause of the atrophy in this case, in Dr. Morgan's opinion, comes down to two causes, either the poisoning of the gases or the poisoning of tobacco or the two together.

Edward C. Stone, Esq., attorney for the insurer, submitted a request for rulings on the law, attached hereto. The arbitrators give Mr. Stone Nos. 1 to 8, inclusive, and Nos. 21 to 26, inclusive, and refuse Nos. 9 to 20, inclusive, reserving to the insurer its rights.

Subsequent to the hearing on May 24, information was received by the arbitrators that Hurle had been examined at the Eye and Ear Infirmary and that a diagnosis had been made of "tabes," and he had been referred to the Massachusetts General Hospital, where this diagnosis was confirmed. Several Wasserman tests showed a positive reaction, and salvarsan, or "606," was administered.

The arbitrators had before them, up to the close of the hearing on May 24, evidence only as to two possible causes for this blindness: first, the use of tobacco; second, the poisons from the furnaces over which Hurle worked. The information as to the examination at the Massachusetts General Hospital indicated a third cause, *i.e.*, a tabetic condition which is a common cause of optic atrophy. Both parties were notified, and the arbitrators granted another hearing to consider this new development, which hearing was held at the rooms of the Industrial Accident Board, July 3, 1913. Dr. O'Reilly, called as an expert for the injured workman, testified that in his opinion the Wasserman reaction had not, in any way, changed his judgment as to the cause of this blindness being due to the effect of the poisonous gases in Hurle's employment. Dr. O'Reilly testified that the Wasserman reaction was a test not alone for syphilis, but also, under given conditions, for scarlet

fever, tuberculosis, lead poisoning and a number of other diseases which he named.

Dr. John Morgan, the eye specialist, called as an expert by the insurance company, testified that in his opinion, in this case, the arbitrators should disregard the Wasserman test, and that his opinion had not changed regarding the cause of blindness being due to poisonous gases in the course of Hurle's employment.

At this point the American Mutual Liability Insurance Company announced itself as willing to disregard all developments happening after the hearing on May 24, and desired the case settled on the testimony as offered up to and including the hearing on May 24, 1913.

The arbitrators find that William Hurle, an employee of the Plymouth Cordage Company, insured under the Workmen's Compensation Act in the American Mutual Liability Insurance Company, was, after July 1 and until Oct. 21, 1912, employed in the manufacture of producer gas, and as a result of this employment his eyes were exposed to excessive heat and a glare irritating to the eyes. In addition he was exposed to the fumes of the gases from these furnaces, which gases contained certain chemical compounds which, when introduced into the human system, either through the respiratory or the digestive tract, might produce atrophy of the optic nerve and consequent blindness.

The arbitrators find, as a matter of fact, that there was no traumatic injury or blow to the exterior of the eye which would have brought about this atrophy.

The arbitrators find, after considering the testimony as to the possible effect of tobacco, that Hurle had been using tobacco for more than thirty years; and while tobacco might produce atrophy, there is no likelihood that it had this result in this case, Dr. Shaw's examination of Hurle on Aug. 10, 1912, excluding it as a factor in consideration.

The arbitrators find that while there are many causes, known and unknown, that produce atrophy of the optic nerve, none of these causes, except that of tobacco and gases, are shown in evidence to have operated in Hurle's case, and the fact that he has been exposed constantly in his employment to poisonous

gases, which are an accepted cause of atrophy, is sufficient to show, by the preponderance of testimony, that Hurle's blindness was brought about by the entrance into Hurle's body of noxious gases — by-products of coal gas — while at his regular employment for the Plymouth Cordage Company.

The arbitrators find that Hurle's blindness is due to the inhalation of noxious gases, resulting in optic neuritis or acute inflammation of the optic nerve, and is an injury arising out of and in the course of his employment.

Regarding the exact date of the beginning of this atrophy, the fact that on August 10 Hurle had only one-fiftieth of vision in his left eye and two-thirds of normal vision, with glasses, in his right eye, and was practically blind and incapacitated for labor in both eyes, within sixty days thereafter, indicates, as testified to by Dr. Morgan, that the disease from which Hurle suffered was an acute process which, once begun, went rapidly forward to its conclusion of total blindness. The arbitrators find that the overwhelming preponderance of the testimony indicates, and they find as a fact, that the disease in either eye did not antedate July 1, 1912.

The arbitrators find that due to and arising out of his employment, William Hurle received an injury which resulted in blindness and incapacity for labor, and is therefore entitled, under section 9 of Part II. of the Workmen's Compensation Act, to total disability for a period of three hundred and fifteen weeks and seven-eighths of one day, from Oct. 26, 1912, at one-half his average weekly wages, \$9.52, or a total of \$3,000.

The arbitrators further find, in addition, that, according to section 11, Part II., for the reduction to one-tenth of normal vision in both eyes, with glasses, Hurle is entitled to additional compensation of one-half his average weekly wages for a period of one hundred weeks from Oct. 26, 1912, at \$9.52 per week, or \$952.

EDW. F. MCSWEENEY.  
FREDERICK A. P. FISKE.  
JOHN H. HARWOOD.

*Insurer's Requests for Rulings.*

1. It is incumbent upon the employee to prove by a fair preponderance of the evidence that he received a personal injury beginning on or about the first day of August, 1912, and continuously thereafter until Oct. 23, 1912, arising out of and in the course of his employment.

2. The employee has the burden of proving by a fair preponderance of the evidence that he received a personal injury beginning on or about the first day of August, 1912, and continuously thereafter until Oct. 23, 1912, arising out of and in the course of his employment.

3. It is incumbent upon the employee to prove by a fair preponderance of the evidence that he received a personal injury on or after July 1, 1912, arising out of and in the course of his employment.

4. The employee has the burden of proving by a fair preponderance of the evidence that he received a personal injury on or after July 1, 1912, arising out of and in the course of his employment.

5. If, upon the evidence, the employee might have received the personal injury from which he alleges he is now suffering prior to July 1, 1912, the employee is bound to exclude by a fair preponderance of the evidence the receiving of such personal injury prior to July 1, 1912.

6. If, upon all the evidence, it is as likely that the employee received before July 1, 1912, the personal injury of which he now complains, as that he received it after July 1, 1912, the employee is not entitled to compensation.

7. If other causes than those arising out of and in the course of the employee's employment might have produced the personal injury claimed in this case, the plaintiff is bound to exclude the operation of such causes by a fair preponderance of the evidence.

8. If, upon all the evidence, it is as likely that the personal injury claimed to have been received by the employee was due to causes not arising out of and in the course of his employment, as that it was due to causes arising out of and in the course of his employment, the employee is not entitled to compensation.

9. There is no evidence that the employee received a personal injury within the meaning of the Workmen's Compensation Act.

10. There is no evidence that the employee received a personal injury within the meaning of the Workmen's Compensation Act after July 1, 1912.

11. There is no evidence that the employee received a personal injury within the meaning of the Workmen's Compensation Act arising out of or in the course of his employment on or after July 1, 1912.

12. Upon all the evidence, the employee is not entitled to compensation under the Workmen's Compensation Act.

13. Upon all the evidence, the employee did not receive a personal injury within the meaning of the Workmen's Compensation Act.

14. Upon all the evidence, the employee did not receive a personal injury within the meaning of the Workmen's Compensation Act on or after July 1, 1912.

15. Upon all the evidence, the employee did not receive a personal injury arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act.

16. Upon all the evidence, the employee did not receive a personal injury arising out of and in the course of his employment within the meaning of the Workmen's Compensation Act on or after July 1, 1912.

17. A disease, even though arising out of and in the course of his employment, is not a personal injury within the meaning of the Workmen's Compensation Act.

18. If the employee was suffering from a disease prior to July 1, 1912, even though it be one arising out of and in the course of his employment, and as a result of continuing in his employment that disease is aggravated, the employee has not received a personal injury within the meaning of the Workmen's Compensation Act.

19. If the employee was suffering from a disease prior to July 1, 1912, even though it be one arising out of and in the course of his employment, and as a result of continuing in the employment that disease is aggravated, the employee is not entitled to be paid compensation under the Workmen's Compensation Act.

20. If the employee was suffering from atrophy of the optic nerve prior to July 1, 1912, even though that atrophy arose out of and in the course of his employment, and as a result of continuing in the employment that atrophy is aggravated, the employee is not entitled to be paid compensation under the Workmen's Compensation Act.

21. The burden is upon the employee to show affirmatively that any personal injury received by him arose out of and in the course of his employment.

22. If it can be affirmed only upon mere conjecture that the employee has received a personal injury arising out of and in the course of his employment, he is not entitled to compensation.

23. If the employee might have received the personal injury claimed in this case from unknown causes, the employee was bound to exclude the operation of all unknown causes by a fair preponderance of the evidence.

24. Upon all the evidence, the only personal injury, if it be such, within the meaning of the Workmen's Compensation Act, received by the employee, was an atrophy of the optic nerve.

25. Upon all the evidence, the employee received no traumatic injury.

26. The only evidence, if any, that any personal injury was received by the employee arising out of and in the course of his employment is the evidence that the atrophy of the optic nerve was caused by the glare of the light and the inhalation of the gases manufactured by the employer in the apparatus tended by the employee.

By its Attorneys,  
SAWYER, HARDY & STONE.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the hearing room, Pemberton Building, Boston, Mass., on Thursday, Sept. 18, 1913, at 10 A.M., and Thursday, Sept. 25, 1913, at 9.30 A.M., and affirms and adopts the findings of the committee of arbitration.

Subsequent to the hearings of the arbitrators in this case, information was received by the arbitrators that there was evi-



dence existing that the blindness by which Hurle was incapacitated from labor was due not to his employment, but to a tabetic condition resulting from a syphilitic infection. A meeting of the arbitrators was called to consider this matter, and after certain testimony had been produced by the insurer, on the initiative of the insurer it was mutually agreed by both parties to the case that the arbitrators should disregard any testimony in regard to syphilis as being the cause of the blindness from which Hurle suffered. It was further agreed that, in case that evidence to substantiate the claim of syphilis should not be given, the findings of the arbitrators that the cause of the blindness was due to the poisons of coal tar gas would be accepted, and appeal from the decision, if taken, would be only from the fact that blindness resulting from the inhalations of poisonous gases in Hurle's occupation was not a personal injury within the meaning of the law. A finding was subsequently made by the arbitrators that Hurle's blindness was due to the poisons of coal tar gas inhaled by Hurle during his employment subsequent to July 1, 1912.

In its appeal to the Industrial Accident Board for review of this case, the insurer asked permission to submit new testimony that Hurle's blindness was due to syphilis.

The Industrial Accident Board granted the request of the insurer, and reopened the case on the facts that evidence might be submitted that syphilis and not coal tar gas was the cause of Hurle's blindness. The attorney for the employee objected.

Various doctors from the Massachusetts Eye and Ear Dispensary and the nerve department of the Massachusetts General Hospital, with specialists called by the injured employee, gave testimony to the effect that, on Oct. 26, 1912, Hurle presented himself at the out-patient department of the Massachusetts General Hospital for examination. It appearing to the examining doctor at the out-patient department that Hurle's blindness was due to tabes, he was referred to the Massachusetts General nerve department, and there put through certain examinations and tests, all based on the idea that he previously had had syphilis, and that the condition they were dealing with was tabes, resulting therefrom. The physicians called by the insurer testified that Hurle had what was called

the Argyle-Robertson pupil, a condition in which the pupil of the eye responds to light but not distance. It was found that there was absence of the biceps, patella and Achilles reflexes, all of which were characteristic of tabes. On the assumption that Hurle's disease was tabes following syphilis, apparently verified by these various tests, another test called the Wasserman test and a test called the Nougchi test were taken, the results of which further confirmed the doctors of the nerve department of the Massachusetts General Hospital in their belief that they were dealing with a case of optic atrophy, which is one of the manifestations of tabes, and which was due to syphilis; and in consequence they testified this was the direct cause of Hurle's blindness. In the record of the Massachusetts General Hospital, produced at the hearing, the examining doctor wrote that Hurle, in answer to a direct question, replied that he "might have had lues," which is one of the medical terms describing the objective result of syphilitic infection. Hurle testified in rebuttal that while he might have made this answer, he did not understand what "lues" meant, and as a matter of fact never had syphilis.

It was agreed that an examination of Hurle's family by an insurance doctor since he became blind showed that Hurle had five children living at home, the oldest being eleven years; that his wife has had no miscarriages, no children having died in infancy, and the youngest child now living being nine months old; that in none of these children is found the stigmata of syphilis expected by experts to be found in children having a syphilitic parent.

Dr. John Morgan of Huntington Avenue, Boston, an eminent eye specialist, who originally appeared at the request of the insurer as its expert, who had examined Hurle in December, 1912, before he became quite blind, testified that while he agreed that Hurle's physical condition, the absence of reflexes, etc., were as described by the doctors of the Massachusetts General Hospital, it did not follow that this was proof that the man had tabes following syphilis. In his opinion the Wasserman test was in this case not a conclusive test, and not to be relied on as to syphilis, for the reason that a positive Wasserman reaction was shown for other diseases than syphilis, such

as lead poisoning, advanced tuberculosis, scarlet fever, tropical diseases, etc. Dr. Morgan gave it as his opinion that the degenerative process which had taken place in Hurle's dorsal nerve can be and should be in Hurle's case, attributed to the carbon monoxide, carbon dioxide and other poisons in the coal tar gas which he inhaled during his employment; and in his opinion Hurle's inhalation of the poisons from these gases was wholly responsible for his blindness.

After consideration, the Board finds that the evidence shows that all the symptoms which the insurer's doctors ascribe to syphilis can also result from carbon monoxide, carbon dioxide or other poisons emanating from coal tar gas.

Drs. McConnell and Spiller, in "A Clinicopathologic Study of Carbon Monoxide Poisoning," in the Journal of the American Medical Association of Dec. 14, 1912, give almost the exact symptoms described by Hurle in his examination before the arbitration committee, as "nausea and indefinite feeling of illness, with lightness of the head, headache, vertigo, great muscular weakness." "Loss of control of the sphincters," which is given as one of the proofs of tabes by the experts for the insurer, is given by McConnell and Spiller as one of the sequelæ of carbon monoxide poisoning.

The occurrence of relapsing carbon monoxide poisoning is explained by Becker and Schwerin on the basis of a "deep-seated disturbance of the regeneration of all organs, especially of the vascular walls and the ganglion cells of the nervous system, as is evidenced by the secondary hemorrhages, idiocy, imbecility, etc., which are observed as sequelæ."

The poisonous action of carbon monoxide is without doubt due to the fact that it is readily absorbed by the blood entering into a definite chemical compound with hæmoglobin. This combination is more stable than a similar compound with oxygen gas, and is therefore slow in elimination. — ("Poisons, their Effects and Protection," A. Wynter Blyth, "Mass Poisoning by Carbon Monoxide.")

The Industrial Accident Board has defined "personal injury," as used in the Workmen's Compensation Act, to be any injury, or damage, or harm, or disease which arises out of and in the course of the employment which causes incapacity for work, and takes from the employée his ability to earn wages,

the act providing for the payment of compensation "while the incapacity for work resulting from the injury is total," based upon half the average weekly wages of the employee, and "while the incapacity for work resulting from the injury is partial," based upon "one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter," thus making it clear that the law was intended to provide for the payment of compensation for a "personal injury" which causes incapacity for work.

The weight of the evidence in this case does not show that Hurle ever had syphilis, or that there ever was any other influence other than the personal injury resulting from the poisons of coal tar, which was sufficient to bring about the conditions from which the employee now suffers.

The Board finds that, in view of the fact that Hurle, the said employee, showed no evidence of loss of vision until about Aug. 10, 1912; and that he became practically blind on Oct. 26, 1912, the loss of vision in both eyes was due to a personal injury, the result of the introduction into the said employee's body of an acute poison subsequent to July 1, 1912, the latter being the date upon which the Workmen's Compensation Act became effective.

The Board finds that the vision of the employee has been reduced to less than the "one-tenth of normal vision in both eyes with glasses," required by section 11 (a), Part II., of the act to make effective the provision requiring the insurer to pay the additional compensation specified therein; that is, the payment of a weekly compensation of half the average weekly wage for a period of one hundred weeks, the said employee being, in fact, totally blind, having no vision in either eye.

The Board finds that the said employee is totally incapacitated for work as a result of a personal injury which arose out of and in the course of his employment, said personal injury causing total loss of vision in both eyes, and resulting from an attack of acute optic neuritis, said acute optic neuritis being caused by the gradual accumulation of the poisonous emanations from coal tar gases; that said personal injury in-

capacitated him on Oct. 26, 1912; and that, in so far as the Workmen's Compensation Act is concerned; there is no difference between the incapacity for work caused by blindness resulting from the effect of the gradual accumulation of the poisonous emanations of coal tar gas inhaled into the human system and that resulting from a blow which causes equal loss of vision and incapacity for work, provided the personal injury received arises out of and in the course of the employment, as shown in this case. The Board finds that there is due the employee, the said William Hurle, a weekly payment of \$9.52 on account of the total incapacity for work resulting from the said personal injury, payments to date from Nov. 9, 1912, this being the fifteenth day after the injury, and to continue during said total incapacity for work in accordance with the provisions of the act, not to exceed a period of three hundred fifteen weeks and seven-eighths of one day, nor to exceed the sum of \$3,000; and a further payment of \$952 in weekly payments of \$9.52 on account of the total loss of vision in both eyes, said payments to date from Oct. 26, 1912, and to continue for a period of one hundred weeks.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 182.

JAMES W. ROBBINS, *Employee*.  
WARD BAKING COMPANY, *Employer*.  
OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *Insurer*.

INCAPACITY FOR WORK. EVIDENCE SHOWS THAT EMPLOYEE  
WAS NOT ENTITLED TO FURTHER COMPENSATION ON AC-  
COUNT OF INCAPACITY, AS CLAIMED.

The employee claimed that he was entitled to the continuance of the weekly payments from the insurer on account of incapacity for work. The medical evidence showed that the injury was "barely more than a scratch," and that all incapacity as a result of the injury had ceased.

*Held*, that the employee was not entitled to further compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James W. Robbins v. Ocean Accident and Guarantee Corporation, Ltd., this being case No. 182 on the files of the Industrial Accident Board, reports as follows:—

The committee on arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Wilfred H. Goddard, representing the employee, and Charles E. Lawrence, representing the insurer, being duly sworn, heard the parties and their witnesses at the Common Council Chamber, City Hall, Cambridge, Mass., Monday, May 19, 1913, at 10.30 A.M.

James W. Robbins was employed by the Ward Baking Company, 140 Albany Street, Cambridge, Mass., as a mixer. On Thursday, Dec. 5, 1912, at 3 P.M., while working on a platform, a piece of sheet iron, thrown by another workman, hit him on the head and chest, incapacitating him temporarily.

Compensation was paid in this case at the rate of \$7 per week from Dec. 5, 1912, to Feb. 6, 1913, at which time compensation ceased, on the contention of the insurance company that Robbins was not then suffering from the injury sustained on Dec. 5, 1912.

He was examined by Thomas F. Aiken, M.D., for the insurance company, who reported that he had a bad cold which was more to blame for his condition than the injury, and that he saw no reason why he should not be able to work. Later, the Industrial Accident Board had him examined at the Massachusetts General Hospital, as provided by section 8, Part III. of the Workmen's Compensation Act, and Dr. F. A. Washburn, resident physician, reported as follows:—

We are in receipt of yours of the 9th instant concerning James W. Robbins. He was seen in our out-patient department on April 10. The surgeon states that this man, as a result of an injury, probably received a mild concussion. The wound on the chest was trifling and barely more than a scratch. The patient is very nervous. It is our belief that the symptoms will disappear when the case is settled. We see no reason why he cannot go back to work.

The employee claimed that he was still suffering from the effects of the injury. It developed at the hearing that he had gone to live with an aunt at Beachmont, and had consulted Dr. Brown there regarding a cold and not in relation to his injury. It was also shown that he had been troubled with a bad cough previous to the injury.

The committee finds, therefore, that Robbins' disability ceased Feb. 6, 1913, and that he is not entitled to any further compensation.

JOSEPH A. PARKS.

CHARLES E. LAWRENCE.

WILFRED H. GODDARD.

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CASE No. 183.

PETER WAISWELL (DECEASED), *Employee*.

STOUGHTON RUBBER COMPANY, *Employer*.

GENERAL ACCIDENT ASSURANCE CORPORATION, LTD., *Insurer*.

LOBAR PNEUMONIA CAUSES DEATH OF EMPLOYEE. CLAIM FOR  
COMPENSATION FILED BY WIDOW. EVIDENCE SHOWS THAT  
INJURY DID NOT ARISE OUT OF AND IN THE COURSE OF  
THE EMPLOYMENT.

The employee, a sweeper, was required, among other things, to clean the lavatory in the factory in which he was employed, and his widow claimed that, as a result of getting his feet wet sweeping the floor of said lavatory, he contracted lobar pneumonia and died. The evidence indicated that there was no connection between the getting of wet feet and the pneumonia which caused the death of the employee, the disease having been well advanced at the time the injury was said to have occurred.

*Held*, that the employee did not receive a personal injury arising out of and in the course of his employment, lobar pneumonia, which caused his death, not being due to or caused by anything connected with his employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Peter Waiswell (deceased) v. General Accident Assurance Corporation, Ltd., this being case No. 183 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Edgar A. Marden, representing the employee, and Robert O. Harris, representing the insurer, being duly sworn, heard the parties and their witnesses at the Selectmen's Room, Town Hall, Stoughton, Monday, April 28, 1913, at 10 A.M.

We find that Peter Waiswell of 54 School Street Avenue, Stoughton, was employed by the Stoughton Rubber Company of Stoughton, Mass.; that his average weekly wages were \$8.78; that he was employed as a sweeper, and had charge of the sanitariums in connection with the coat-room department; that on Thursday, December 26, he complained of feeling sick in his chest. He worked until Monday night, December 30, and on Tuesday he did not report for work. He died of pneumonia on Jan. 3, 1913, and was attended by Dr. E. H. Ewing of Porter Street, Stoughton.

It appeared in evidence on the testimony of Mrs. Bessie Waiswell, widow of Peter Waiswell, that on Monday, December 30, he ate a good breakfast and went to work apparently all right. He came home at noon time, but made no complaint. When he arrived home at 6 o'clock at night he complained of his side and said he felt bad. He stated that Charlie, referring to Charles A. Kartstein, the foreman who had charge over his department, had told him to sweep out the toilet, as water had collected in one corner of it, due to the dripping of a faucet which apparently had not been properly turned off; that he got his feet wet cleaning out the toilet, and that when his wife took off his shoes that night they were wet; that in consequence of getting his feet wet he contracted pneumonia from which he died.

We find by the testimony of Dr. Edward H. Ewing, a practicing physician in Stoughton for fifteen years, that he was called to attend Peter Waiswell on the first day of January; that he saw the patient at 8 P.M., and found him in bed, a man of sixty-five years of age, rather emaciated, who looked as though he had seen a pretty hard life of labor, and his condition was that of lobar pneumonia, well advanced; that he died on Friday night, January 3 about 11 o'clock. The doctor stated that when he was first called to Peter Waiswell he formed an



opinion that the man had been sick some time because when he saw him the disease was well advanced.

Dr. Robert B. Dixon, 232 Clarendon Street, Boston, stated in evidence, that pneumonia is an acute and infectious disease caused by a germ to which has been given the name of pneumococcus; that the phases of the disease commence with the period of incubation and are as follows: the period of incubation is from two to five days, and during that period of time there may be some moderate symptoms of discomfort, but none noticeable; then comes the next period which is congestion, during which there are chills, fever, pain, cough and beginning to raise sputum which later becomes bloody. The second stage is from two to five days. The third is that of consolidation, the deposit of the sticky material in the cells, that is, the consolidation of the lung, — full-fledged pneumonia; that generally goes on for several days and there is apt to be in the patient a crisis which means either a tendency towards recovery or fatal relapse towards death. Exposure might be a contributory cause or factor, and that is very doubtful; exposure to wet or cold alone is not a cause for pneumonia. The two chief predisposing conditions which may develop pneumonia are age and the use of alcohol; the more or less steady use of it, particularly in a person who is getting along in years.

The doctor stated that in the case of Peter Waiswell, the wetting of the feet was simply an instance during the period that pneumonia was going on; that there was no connection with his getting his feet wet and the chill and the pain in his side; that it just happened they both came the same day.

There was no evidence to show other than the statement that he got his feet wet, that his pneumonia was the result of exposure and arose out of his employment, and from all the medical testimony presented we find that his death was not due or caused by anything connected with his employment, and that the widow is not entitled to any compensation.

DUDLEY M. HOLMAN.  
ROBERT O. HARRIS.

*Dissenting Opinion.*

I agree with the statement of facts as set forth in the majority report, with perhaps one exception, — "that on Thursday, December 26, he complained of feeling sick in his chest." This was the statement made by Charles A. Kartstein, the defendant's foreman, under cross-examination, and is not verified by the testimony of the other witnesses called. Mike Melankavich testified that he didn't know of his having any sickness or making any complaints of being sick. John Szynoevitch testified that Waiswell's last sickness was stomach trouble some six months or a year before. Under cross-examination, Mrs. Bessie Waiswell, the widow, testified that the day after Christmas when Peter came home from work he made no complaint, and made none before Monday, and that he was all right Monday morning. Mary Preygis, Peter's married daughter, testified that the week before the Monday in question Peter was all right and had made no complaint, and that she didn't hear him cough until Monday. Under cross-examination she reaffirmed that he made no complaints of a cold the week before his death. In the light of this mass of contradictory testimony I submit that the testimony of Kartstein above referred to is not entitled to the weight given it in the majority report above, and should be merely given as an alleged and not an actual statement of fact.

I do not, however, agree with the result reached by the majority of my colleagues upon the committee, but rather find from the evidence that Peter Waiswell contracted the pneumonia as the result of exposure arising out of his employment, resulting in the lowering of vitality in his body which rendered him a victim to the pneumonia which caused his decease.

I will refer to the testimony of Dr. Edward H. Ewing. After stating that a cold is not a cause of pneumonia, he says that it has an effect as a predisposing cause, and that it might be one of the causes of pneumonia. He says that the cause of pneumonia is the development of the pneumonia germ in the system, and that cold and wet merely hasten its development.

Dr. Robert B. Dixon, while stating that exposure to wet or cold was not in itself a cause for pneumonia, stated that it

might be a contributing cause or factor, thus in reality classing it with age and alcoholism, which he names as predisposing conditions. Under cross-examination he says again that a cold might be a contributing factor, he wouldn't say it was not, he wouldn't say it was. He acknowledged, however, that he would not advise a man having the germs of pneumonia about him to expose himself to a cold, and admits that the result of a cold is the lowering of the body's power of resistance.

The conclusion is inevitable that both doctors held the exposure to wet as being one of the causes of pneumonia. The prefix "predisposing" merely means "rendering liable to," and signifies that the exposure tended to render Waiswell liable to pneumonia.

As is said in *McGarrahan v. N. Y., N. H. & H. R.R. Co.*, 171 Mass. 215, "The test whether the relation of cause and effect exists between two things . . . is not whether such a condition of things as you may find now exists with this plaintiff commonly and ordinarily follows, but whether it does sometimes follow, and as a matter of common knowledge and experience may be expected sometimes, in rare cases possibly, to follow, from an injury of that kind. The question for you is a practical one, whether, using language as it is ordinarily used and understood, the condition of the plaintiff to-day, for which he seeks to recover damages, was the effect of an injury received by him in May, 1896. If it was, then there is the relation of cause and effect such as to subject the defendant to liability for those consequences which ensued from the injury as received by the plaintiff."

Judge Barker ruled: "In the first request the court was in effect asked to rule that the defendant would not be liable for blood poisoning, unless it was the ordinary effect of such a wound. This was clearly wrong, and the instruction so requested was properly refused."

But even admitting the testimony of Kartstein, "that on Thursday, December 26, he complained of feeling sick in his chest," and regarding that as the period of incubation of the disease in Waiswell, I must still submit that the exposure to wet constituted the moving cause of the pneumonia by its predisposing effect in preparing the body for further development

of the pneumonia germ by lowering the power of the body to throw it off, — a condition but for which Waiswell might have thrown off the disease.

As Dr. Dixon testified, there are walking cases of pneumonia. It may be mild and patients may keep about and get well. He also says most of us carry pneumonia germs, but do not get the disease as our powers of resistance are good. Does it not follow inevitably that that which weakens these powers of resistance is a contributing factor, a natural, necessary and proximate cause of the disease?

In concluding I will cite the case of *Larson v. the Boston Elevated Ry. Co.* (212 Mass. 263), decided in 1912, as a case almost on "all fours" with our own, although not as strong a case as ours.

This was an action of tort by a married woman against a corporation operating an elevated railway for personal injuries sustained from the plaintiff's hand being caught between a sliding door of a car of the defendant and the casing into which the door opened. There was evidence that at the time of the accident the plaintiff was pregnant, and that by reason of the accident a miscarriage occurred, from the results of which the plaintiff became very weak, and that about six months after the accident it was found that she was suffering from tuberculosis.

In answer to a hypothetical question put to the witness, C. Hawes, ending, "I want to know whether that condition of a woman which I have pictured to you would be a favorable condition for the development of tubercular germs in her system," the witness answered, "I should consider that with those facts stated as you have given them to me the condition would be very favorable to the development of consumption."

The examination continued as follows: —

Q. Why? A. For the simple reason that the woman's resistance must necessarily have been lowered by the sickness which she went through.

Q. Now assume that the sickness has been eliminated and that she had continued a well, strong woman. I want to know whether under those conditions you would have expected the tuberculosis germs would have developed into tuberculosis which you found. A. I can think of absolutely no reason why tuberculosis should develop under those circumstances.

In answer to the special question, "Is Mrs. Larson's tuberculosis affection directly attributable to the injury she received by having her hand caught in the car door?" the jury answered, "Yes," and awarded \$3,000 as a verdict, which award was sustained by the Supreme Court.

Judge Sheldon held that "If the plaintiff's tuberculosis had been directly caused by this accident it would of course have been an element of damages; so, if it were induced without any other intervening cause by her weakened condition or her loss of blood, itself directly caused by the accident, the same would be true; and if at the time of her injuries there were germs of tuberculosis in her system, and if the direct consequences of her injuries were to lessen her general health and cause weakness and reduce her power of resistance to the toxic effect of these germs, and if solely by reason thereof the tuberculosis which had been merely latent in her system became developed into an existing disease, as on the evidence the jury warranted in finding, they would then have a right to find that the tuberculosis was a direct and immediate result of her injuries and to assess damages therefor."

I submit that as the injury caused by the car door in this case was the direct cause of the tuberculosis through the lowering of the vitality of Mrs. Larson, so in our case the exposure to wet in the factory was the direct cause of the pneumonia through the lowering of the vitality of Mr. Waiswell. The cases are indistinguishable in the facts and must be indistinguishable in the conclusions reached.

I find that the evidence shows that on Monday, Dec. 30, 1912, Peter Waiswell got his feet wet while working in the course of his employment; that his pneumonia was the direct result of this exposure to wet, which caused a lowering of his power of resistance to the pneumonia germ; that his death being the direct result of this pneumonia the widow is entitled to compensation, and whether he had incipient pneumonia upon him on Thursday, December 26, is of no consequence, as this exposure in that case made acute that which might otherwise have been innocuous.

EDGAR A. MARDEN.

CASE No. 184.

PATRICK O'CONNELL, *Employee.*

PACIFIC MILLS, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

**BEGINNING OF COMPENSATION. WHEN ACTUAL INCAPACITY FOR WORK IS DEFERRED, COMPENSATION BEGINS ON FIFTEENTH DAY, PROVIDED EMPLOYEE LOSES TWO WEEKS' FULL WAGES.**

This employee was injured on Feb. 10, 1913, and did not lose any time until March 23, 1913, when actual incapacity began. He was totally incapacitated for work at the time of the hearing, April 25, 1913, suffering from a hernia caused by reason of a truck which was being hauled or shoved by another workman coming in violent contact with him.

*Held*, that the employee was entitled to full compensation, beginning on March 23, 1913, the date upon which he was first incapacitated for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick O'Connell v. American Mutual Liability Insurance Company, this being case No. 184 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Cornelius J. Mahoney, representing the employee, and G. Hawthorne Perkins, representing the insurer, after being duly sworn, heard the parties and their witnesses at Council Chamber, City Hall, Lawrence, Friday, April 25, 1913, at 10.30 A.M.

The committee finds that the above-named employee received an injury arising out of and in the course of his employment on Feb. 10, 1913, by reason of a truck which was being hauled or shoved by another workman coming in violent contact with said employee.

The injury caused thereby was a rupture or internal hernia. The employee lost no time from the injury following the accident up to March 22, 1913. Up to this time he had been receiving his usual average wages, but was obliged to work with considerable pain and with less tax upon his strength; but on

March 22 was obliged to abandon work on the advice of his physician, to take proper care of the hernia from which he was suffering.

The committee finds that his average weekly wages at the time of the injury were \$9.19, and that he is entitled to a weekly compensation of \$4.59, beginning March 23, 1913. This date is taken for the beginning of compensation because the employee has already now lost two weeks' full wages, and the compensation should cover or apply to the time he has lost beginning with the fifteenth day after the injury.

The committee finds that the employee is now wholly incapacitated for work as a result of the injury.

DAVID T. DICKINSON.  
CORNELIUS J. MAHONEY.  
G. H. PERKINS.

CASE No. 187.

JOHN DOLAN, *Employee*.

BOSTON DEVELOPMENT AND SANITARY COMPANY, *Employer*.  
CASUALTY COMPANY OF AMERICA, *Insurer*.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.  
INJURY OCCURS WHILE BEING TRANSPORTED FROM PLACE  
OF EMPLOYMENT TO MAINLAND. EMPLOYEE ENTITLED TO  
COMPENSATION ON ACCOUNT OF INCAPACITY FOR WORK.

The employee was injured while being transported from Spectacle Island, the place of his employment, to the mainland, having his finger jammed between the boat and the dock and being incapacitated for work.

*Held*, that the injury arose out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John Dolan v. Casualty Company of America, this being case No. 187 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Atherton N. Hunt, representing the insurer, and William J. Sullivan, representing

the employee, being duly sworn, heard the parties and their witnesses at the Board Room of the Industrial Accident Board, Monday, April 14, 1913, at 10 A.M.

Dolan was employed by the Boston Development and Sanitary Company of Boston as a fireman on Spectacle Island. While being transported from the island to the mainland, on the gasoline launch "Madeline," Wednesday, Jan. 29, 1913, at 5.15 P.M., he was jammed between the boat and the dock, fracturing his finger.

The case went to arbitration on the contention of the insurer that inasmuch as the injured man had finished his employment and was on his way back to the mainland the injury was not one that arose out of and in the course of his employment. After the hearing had proceeded at some length, Mr. Batchelder, representing the insurer, conceded that the injury did arise out of and in the course of the employment. It was then agreed that the average wage of the injured man was over \$20 per week.

The committee, therefore, finds that the injury to this employee arose out of and in the course of his employment, that his average weekly wage is over \$20 per week, and that he is entitled to \$10 per week, beginning from the fifteenth day after the injury up to and including April 16, 1913.

JOSEPH A. PARKS.

ATHERTON N. HUNT.

WILLIAM J. SULLIVAN.

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CASE No. 190.

KATHERINE LEE, ALLEGED DEPENDENT, THOMAS J. LEE, DECEASED, *Employee*.

NICHOLAS R. POWER, *Employer*.

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer*.

SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE  
EMPLOYEE. INJURY RESULTS FATALLY. NO COMPENSA-  
TION DUE ALLEGED DEPENDENT.

The employee, while intoxicated, being displeased at the request of his employer that he come down from the roof to perform work for him on the piazza, said: "You think I am drunk, but I will show you that I am not." He then stood up and began to dance on the top of the roof, and while doing so lost his footing,



sliding down the roof to the edge and then falling to the ground, the injury resulting fatally.

*Held*, that the injury did not arise out of his employment, that he was injured by reason of his own serious and willful misconduct, and that his mother, if dependent, is not entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Katherine Lee, alleged dependent of Thomas J. Lee, deceased, v. Fidelity and Casualty Company of New York, this being case No. 190 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Leander F. Herrick, representing the employee, and J. Otis Sibley, representing the insurer, after being duly sworn, heard the parties and their witnesses at City Hall, Worcester, Monday, May 5, 1913, at 10.30 A.M.

The committee finds that the deceased, Thomas J. Lee, a man of twenty-nine years of age, on and before Oct. 30, 1912, was employed by Nicholas R. Power of Worcester as a roofer; that on said October 30 the said employee accidentally fell from the roof of a three-story building to the ground and received injuries thereby from which he died on Nov. 3, 1912.

The evidence as to the circumstances of the accident, and of the condition of Lee before the accident, was conflicting. The main question was whether Lee was in an intoxicated condition before the accident, and whether the accident was caused by such intoxication.

A fellow employee named Erickson testified that he observed Lee for some time before the accident, and did not observe any signs of intoxication about his appearance or conduct; that he had walked with him to their common place of employment at this building for a distance of about a mile before commencing to work on the morning of the accident, and had gone with him onto the roof and was working within 10 or 12 feet distant from him when Lee fell; that he fell as a result of slipping on the slate of the roof which ran with a steep pitch, and was at the time slippery from frost, and that the accident occurred a little after 8 o'clock in the morning.

After so testifying, the witness stated in cross-examination that he could not say whether Lee was intoxicated or not. Two investigators employed by the insurance company testified that Erickson had stated to them shortly after the accident that Lee was in such an intoxicated condition that morning, just before he commenced work, that he, Erickson, urged him not to go on the roof on account of the danger of his falling off through not being able to take care of himself, but that Lee insisted upon going on the roof and starting to work.

The investigators testified that these alleged statements by Erickson were made before they had had any interview with the employer, Mr. Power, as to the circumstances of the accident.

The employer, Mr. Power, testified that he came onto the roof a few minutes before the accident, and then noticed that Lee was in an intoxicated condition, so much so that he was unsteady in his position as he sat over the ridgepole; that at this time he was only 3 or 4 feet away from Lee and could smell the odor of liquor from him; that he, Power, then fearing that some accident would happen to Lee if he stayed on the roof, and not wishing to excite him, said he would like to have him do some work for him on the piazza of the house; that he said this to Lee with the intention of persuading him to come down, but that he was not going to have him do any work after getting him from the roof on account of the condition he was in; that Lee then said to him, "You think that I am drunk, but I will show you that I am not." That Lee then stood up and began to dance on the top of the roof, and while doing this lost his footing and slipped down on the slated roof almost grabbing him, Power, to save himself as he fell; but that Lee slid down and fell over the edge of the roof to the ground.

The committee finds that the evidence which Erickson gave at the hearing was contradictory to the statements which he made to the investigators following the accident, and that his testimony was lacking in credibility and not reliable; that the testimony of Power as to the condition and acts of Lee before the accident was correct and in accordance with the facts; and that the accident and injury to Lee were caused by his intoxicated condition and by his attempting to dance or step around

on the roof in an endeavor to show to Power that he, Lee, was not intoxicated.

The committee, therefore, finds that the injuries sustained by Lee did not arise out of his employment; that he was injured by reason of his own serious and willful misconduct; and that his mother, the said Katherine Lee, if dependent, is, therefore, not entitled to compensation.

DAVID T. DICKINSON.

J. OTIS SIBLEY.

LEANDER F. HERRICK.

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CASE No. 191.

AGNES M. BLACK, WIDOW OF CYRUS B. BLACK, *Employee*.  
E. A. ROBERT & SONS, *Employer*.  
TRAVELERS INSURANCE COMPANY, *Insurer*.

TUBERCULAR MENINGITIS RESULTING FROM INJURY TO ANKLE.  
INJURY AROSE OUT OF AND IN THE COURSE OF THE EM-  
PLOYMENT. WIDOW ENTITLED TO COMPENSATION.

The employee was a furniture polisher and received an injury to his ankle which arose out of and in the course of his employment. Several months later he became incapacitated for work, his physician diagnosing his case as tubercular meningitis, due to some organism. In the opinion of the medical experts, local traumatism, the precursor of local tuberculosis, was a predisposing cause.

*Held*, that the injury arose out of and in the course of the employment, and that the widow is entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Agnes M. Black, widow of Cyrus B. Black, *v.* Travelers Insurance Company, this being case No. 191 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Edward F. Coughlin, representing the employee, and William C. Prout, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Friday, May 16, 1913, at 10 A.M.

Cyrus B. Black was employed by E. A. Robart & Sons, 311 Washington Street, Brookline, as a furniture polisher, his average weekly wages being \$16.50. About 3 P.M., Oct. 12, 1912, while carrying a dining table from one room to another, he stepped on a block of wood and turned his ankle outward, being thrown up against a partition and injuring his elbow. He went on with his work although he had considerable pain, thinking the injury would not amount to much. He continued for about two weeks, at which time he gave up work and called in Dr. William C. Mackie who treated him up to and including January 12, when he died, the medical certificate stating that the cause of death was "meningitis of doubtful origin."

The case went to arbitration on the contention of the insurance company that the cause of death was in no way connected with the injury claimed to have been sustained on Oct. 12, 1912. It was stated at the beginning of the hearing that it was purely a medical question as to just what was the origin of the meningitis which caused death.

Dr. Mackie testified at considerable length as to the treatment given the deceased, stating that as the case bothered him somewhat he had called in Dr. Crandon to assist him in diagnosing it. It was found that the injured man had quite an extensive injury to the external malleolus. Dr. Crandon thought that it was inflammation of the bone which might perhaps have to be operated upon. Dr. Sanborn also was called in and saw the injured man three or four times at Dr. Mackie's request.

On December 16 Dr. Littlefield, of the insurance company, asked Dr. Mackie about the case, and suggested an X-ray examination, and Dr. Percy Brown, an X-ray expert of Boston, made three plates of the ankle and one or two of the elbow.

The injured man complained continually of severe pains in the ankle, and later on of severe pain in his head, until on January 10 Dr. Mackie found him in a very serious condition. He testified that he thought the patient had tubercular meningitis due to some organism, as the left leg was drawn up and the head retracted at that time.

Dr. Mackie said it was possible for this man to have developed meningitis from the injury to the ankle through the organism getting a foothold in the blood, because he was prob-

ably more susceptible to the influence of tuberculosis than perhaps other people are. He got an injury, developed a localized tuberculosis, and later on declined steadily and progressively in health, and tuberculosis got the better of him and attacked him in the brain. He thought it reasonable to suppose the process had attacked the ankle, and was carried through the blood to the brain, and that there were no other possibilities in the case which might have caused his death other than the condition in his ankle.

Dr. Littlefield, who testified for the insurance company, in answer to the question as to whether or not there could be any connection between the injury to the ankle and the man's death, as to whether or not that injury did contribute in any way, he said it would be impossible to say: "As to its having a contributory influence, if I should say it had not, I would say a lie, because the man was injured and was confined to his home from a fracture of the fibula which was neglected by the patient and unrecognized by the physicians;" and "he had suffered a great deal of pain, and was in a position for any tubercular germs which lay dormant in his system to awake. Any man who meets with an injury, who loses blood, is placed in a position to become infected, is more liable to infection. He is anæmic, his wounds are likely to suppurate, and in a tubercular case is likely to become excited after an anæmic condition." Being asked if he had formed any opinion, if this injury had not occurred, that this man was on the way to death, he replied, "If the injury had not occurred, under ordinary conditions, the tuberculosis might have remained dormant for the rest of his years. He might have lived out his natural life without dying of tuberculosis."

Dr. Percy Brown, of 155 Newbury Street, Boston, a graduate of Harvard, and a specialist in the use of the X-ray for the purposes of diagnosis since 1901, engaged exclusively in that work, testified that he had taken two plates of the injured ankle, illustrated by pointing out the mass of external malleoli, and emphasized the difference between the two sides. He stated that the minute he saw these records he was strongly suspicious of the element of tuberculosis, because when tuberculosis involves the skeleton the effect upon the X-ray plate is chiefly an

atrophy. Being asked if, in his opinion, the tubercular growth occurred there since the time of the accident, he replied, "It is local traumatism, the precursor of local tuberculosis, — a predisposing cause."

The widow of the deceased testified that there had been a complete recovery from the fistula abscess which had been named as one of the possible sources of tuberculosis; that it had been operated upon two years before the accident; and that there had been no further trouble from it since.

The committee of arbitration, therefore, finds on the evidence that the injured man died of tubercular meningitis brought on by the injury to the ankle on Oct. 12, 1912; that his death arose out of and in the course of his employment; and that his widow, Agnes M. Black, is entitled to \$8.25 per week, half his average weekly wages, for a period of three hundred weeks from the date of the injury.

JOSEPH A. PARKS.

EDWARD F. COUGHLIN.

WILLIAM C. PROUT.

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CASE No. 194.

PATRICK J. McANDREW, *Employee.*

E. A. WILSON & Co., *Employer.*

ÆTNA LIFE INSURANCE COMPANY, *Insurer.*

**SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE  
EMPLOYEE CLAIMED BUT NOT SUSTAINED. INJURY AROSE  
OUT OF AND IN THE COURSE OF THE EMPLOYMENT.**

The sole question at issue in this case was whether the employee was intoxicated at the time of the injury and, if so, whether his being intoxicated contributed to the injury. The most that the evidence showed was that the employee might have been guilty of contributory negligence, but the preponderance of the evidence also showed that a good, experienced driver, in a perfectly sober condition, might easily have received similar injuries, owing to the particularly dangerous character of the tunnel through which he was driving.

*Held*, that the injury arose out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick J. McAndrew

v. Ætna Life Insurance Company, this being case No. 194 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson, chairman, representing the Industrial Accident Board, C. H. Molloy, Esq., of Lowell, Mass., representing the employee, and W. Lloyd Allen, Esq., of Boston, Mass., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Lowell, Mass., on Monday, May 12, 1913, at 10.30 A.M.

Patrick J. McAndrews, while in the employ of E. A. Wilson & Co., was injured on Saturday morning, Jan. 11, 1913, at about 12 o'clock. He was a teamster and was engaged in delivering a load of lime at the time of the injury. He was obliged to pass under an archway, and while driving through was thrown back on top of the barrels of lime with which the wagon was loaded.

The question of whether or not the employee was intoxicated at the time of the injury was raised, and if so, whether his being intoxicated contributed to the injury. The most that the evidence showed was that he might have been guilty of contributory negligence, but the preponderance of the evidence also showed that a good, experienced driver, in a perfectly sober condition, might easily have received similar injuries, owing to the particularly dangerous character of the tunnel or enclosed driveway through which the employee was driving at the time he received his injuries. The committee, accordingly, finds on the preponderance of the evidence that the employee did not receive his injuries by reason of serious and willful misconduct on his part.

The committee finds that the injury received by Patrick J. McAndrews, the said employee, arose out of and in the course of his employment, and that he has been wholly incapacitated for work thereby since the injury was received, and still continues to be wholly incapacitated; and that he is entitled to the payment of compensation based upon his average weekly wages of \$13.50, that is, to the payment of \$6.75 a week, beginning on Jan. 25, 1913, and continuing to May 12, 1913, the date of hearing, said compensation to be continued thereafter during the further total incapacity of the said employee. The com-

mittee further finds he is entitled to the sum of \$52 as a reasonable fee, under section 5, Part II. of the act, on account of the medical services furnished by Dr. James H. Gaffney.

DAVID T. DICKINSON.

W. LLOYD ALLEN.

CHARLES H. MOLLOY.

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CASE No. 196.

JOHN P. EATON, *Employee.*

CAPE POND ICE COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

CASUAL EMPLOYMENT CLAIMED. EMPLOYEE ENTITLED TO COMPENSATION. INJURY AROSE OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

The insurer declined to pay compensation, claiming that the employee was hired to perform "a little carpenter work" and that he was a "casual" employee within the meaning of the term as used in the act. The evidence indicated that he was on duty all the time during the ice-cutting season, replacing the "lags" as they broke. He was as necessary to the business of ice-cutting as the men who housed the ice.

*Held*, that the injury arose out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of John P. Eaton v. Employers' Liability Assurance Corporation, Ltd., this being case No. 196 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, J. M. Marshall, Esq., representing the insurer, and Charles D. Smith, Esq., representing the employee, being duly sworn, heard the parties and their witnesses at City Hall, Gloucester, Saturday, May 10, 1913, at 10 A.M.

On Wednesday, Feb. 19, 1913, at 10 A.M., while in the course of his employment, a splinter stuck in the finger of this em-



ployee, resulting in blood poisoning. Later he had to have his finger removed below the first phalange.

The case went to arbitration on the contention of the insurance company that he was a casual employee, and also that there was not sufficient proof that this man really was injured while working for the Cape Pond Ice Company.

The evidence submitted showed conclusively that this man was not employed simply to do a little carpenter work, but it was found necessary to employ a carpenter in connection with the work of cutting ice, because the "lags" which lifted the ice on the run were continually breaking; as was stated at the hearing, "sometimes fifteen or twenty break in five minutes." Eaton had to be on duty all the time during the ice-cutting season to replace the lags as they broke. He was as necessary to the business of ice cutting as the men who were actually housing it.

It was shown that he received 50 cents per hour, and averaged over \$20 per week.

William D. Howell, 33 Grove Street, a fellow employee of Eaton, testified that he saw Eaton get a splinter in his finger and take it out on the day in question. Dr. Hubbard also testified to having treated Eaton for a very bad finger, and had found it necessary to cut off a phalange up to the first joint, and that Eaton had told him the trouble was caused by a splinter he had received in the finger while in the employ of the Cape Pond Ice Company.

The committee finds on the evidence that the injury arose out of and in the course of employment, and that the employee is entitled to medical and hospital attendance during the first two weeks, and to compensation at the rate of \$10 per week, beginning on the fifteenth day, to be continued until he is able to return to work, and to additional compensation at the rate of \$10 per week for twelve weeks for the loss of the phalange, as provided by section 11, Part II. of the act.

JOSEPH A. PARKS.  
J. MANUEL MARSHALL.  
CHARLES D. SMITH.

CASE No. 197.

ANDREA P. SCIBELLI (ANDARE SHEBET), *Employee.*

FRED T. LEY & CO., INC., *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

AVERAGE WEEKLY WAGES OF A LABORER. COMPENSATION TO  
BE PAID DURING INCAPACITY FOR WORK.

The employee was a laborer for a firm of contractors and earned, it was shown, an average weekly wage of \$12. This was also the average weekly wage to men in such employment. Compensation had been suspended on Jan. 6, 1913, and the committee found that the total incapacity for work of the employee continued to March 31, 1913.

Held, that he was entitled to compensation during incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Andrea P. Scibelli v. Contractors Mutual Liability Insurance Company, this being case No. 197 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Tony Albano, representing the employee, and Joseph G. Roy, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Springfield, Mass., on Friday, April 25, 1913. Norman F. Hesseltine, Esq., appeared for the insurance company.

We find that the employee, Andrea P. Scibelli, was injured while in the employ of Fred T. Ley & Co., Inc., on Aug. 19, 1912, suffering a severe fracture of the right leg.

We find that this employee while working as a laborer for Fred T. Ley & Co., Inc., received \$12 per week wages; and while working at the same employment elsewhere he received the same wages. We further find that \$12 per week is the average wage paid to men in such employment.

We further find that this employee is entitled to compensation from the sixth day of January, the date of the last pay-

ment, up to the thirty-first day of March, twelve weeks at \$6 per week, amounting to \$72, less four days at \$1.33 per day, amounting to \$5.33, which he earned while at work for the Kibbe Brothers Company in Springfield during the month of February, the total amount accruing to him being \$66.67.

JAMES B. CARROLL.  
TONY ALBANO.  
J. G. ROY.

CASE No. 199.

ELLEN BOUCHER, *Employee*.

FARR ALPACA COMPANY, *Employer*.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer*.

NEUROSIS, DUE TO THE INJURY RECEIVED, CAUSES INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY. IMPARTIAL PHYSICIAN FILES REPORT.

The employee received an injury arising out of and in the course of her employment as a result of falling over a truck, striking on her spine. She was afterwards taken to a hospital and operated upon for a retroversion of the uterus. The evidence being conflicting, an impartial physician was called upon to file a report and he stated that the general condition of the employee was such that she was incapacitated for work. This incapacity was due to neurosis, following the injury.

*Held*, that the employee was entitled to compensation during incapacity, continuing from March 10, 1913, to Oct. 27, 1913.

Review before the Industrial Accident Board.

*Decision*.—The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Ellen Boucher v. London Guarantee and Accident Company, Ltd., this being case No. 199 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll of the Industrial Accident Board, chairman, Arthur S. Gaylord, representing the insurer, and Abrom Skolnik, representing the employee, being duly sworn, heard the parties and their wit-

nesses at the Aldermanic Chamber, City Hall, Holyoke, Mass., Friday, May 9, 1913, at 10 A.M. The employee was represented by O. O. Lamontagne, Esq., and the insurer by H. S. Avery, Esq.

The employee, Ellen Boucher, thirty-one years of age, was injured Nov. 19, 1912, at the mill of the Farr Alpaca Company, Holyoke, a few minutes after 12 o'clock at noon by falling backwards over a truck, striking on her spine. She was senseless for two or three minutes; went out for dinner, thinking she would recover, but grew rapidly worse and started for a doctor. While on the way to see the doctor she fell on the street. She was taken at once to the hospital and tended by Dr. Holyoke, who operated upon her November 30 for a retroversion or tipping back of the uterus. She was confined to the hospital for thirty-seven days, since which time she has been unable to do any work. Her average weekly wages were \$14.

Dr. Frank Holyoke testified in substance as follows: he first saw Mrs. Boucher on November 19. She was then in a very nervous condition, complained of pain in the lower part of her spine, and was taken to the City Hospital, where he operated upon her. He saw her in the latter part of January when he examined her at her home, and found the uterus in the position he had fixed it to the abdominal wall; there was then no retroversion and no prolapsus. She made no complaint to him of any pain in the back; that there was the tenderness that naturally followed an operation of this kind. The fact that the uterus fell back into position of retroversion the day after the operation indicated that it was a chronic case and had been in that condition for some time; that, in his opinion, the fall which she received at the mill did not cause the retroversion, but that it did emphasize it, and that without the operation the exaggeration would have continued and the retroversion would have grown worse, and, assuming the operation was successful, as he claimed it to be, it would be about six months before she would be able to do her work in a normal way. He examined her spine and back at the hospital and found some searing of the tissue over the sacrum bone; no other external mark.

Dr. Deroin, the physician called by the employee, testified substantially as follows: that he first saw Mrs. Boucher on the 2d of January at her home. She had been vomiting pretty

badly that morning and for some days previous thereto; found she had trouble with her pelvic organs, a retroversion of the uterus, very much pain in the back at the spinal cord and sacrum bone, and prolapsus of the uterus. She was weak and nervous. He saw her about fifteen times at her home, and she called at his office once or twice a week since then. He said that an operation had been performed and that the prolapsus still existed. The patient told him she had never been sick before the accident; had two babies, and felt well after the second confinement. This was substantially all the testimony introduced at the hearing.

Under section 8, Part III. of the Workmen's Compensation Act, the Industrial Accident Board appointed S. E. Fletcher, M.D., of Chicopee, to examine the employee, and he reported substantially as follows:—

I examined Mrs. Boucher at her home on Friday, May 23, at 4.30 P.M. I find Mrs. Boucher to be a woman of highly developed nervous temperament, and at the time of my examination in a state bordering on hysteria. The tendon and skin reflexes are much exaggerated, showing irritative nerve disorders, these irritations being wholly involuntary, and not influenced by any efforts in one way or another on the part of the patient. While an examination of the pelvic organs and spine was readily consented to, she made much complaint of pain on any pressure, more in some parts than others. The uterus is somewhat low in the pelvis and in a fairly normal position of anteversion. There are evidences of an operation for suspension of the uterus which seems to have been successful. There is no retroversion. Absence of uterine enlargement and of marked leucorrhœal discharge exclude metritis and endometritis. The ovaries are not palpable, as they would be if highly inflamed and enlarged. There is no infiltration of the pelvic tissues. On the whole, I am of the opinion that the pelvic condition is not now the cause of her ill feelings, but that any pelvic symptoms now existent are but the expression of a neurasthenic condition. Examination over the spine shows some tenderness over the lower parts, in the sacrum and coccyx. There is no evidence of fracture, past or present, of those bones. There is now little or no indication of periostitis, which is inflammation of the covering of the bones. The general condition of the woman, however, is such that she is clearly not able to perform work at present. The trouble with the woman now is surely a neurosis, and without question due to the injury and physical conditions which immediately followed. Such a condition as exists to-day would hardly have followed in a person of different nervous temperament. Predisposition to the present condition must have existed prior to the accident, and the retroversion must have been present before the fall. I am of the

opinion that the accident must be considered as being wholly responsible for the present disability, inasmuch as the woman would have developed no acute disorder and would have been at work at present but for the injury on November 19. I am of the opinion, further, that as a direct cause, the pelvic derangement which may have existed prior to the fall or which may have been caused or aggravated by the injury, had but little to do with the present condition of the woman. The trouble at the present time is distinctly a neurosis, and such conditions are at the best slow of recovery.

We therefore find that Mrs. Boucher suffered an injury while in the employ of the Farr Alpaca Company, arising out of and in the course of her employment, which has incapacitated her up to the present time and will incapacitate her for a period of five months from this date. We therefore find that she is entitled to compensation at the rate of \$7 a week from March 10, the date of the last payment, to and including October 27, a period of thirty-three and one-seventh weeks, in amount \$232.

JAMES B. CARROLL.

ARTHUR S. GAYLORD.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the insurer, who was represented by H. S. Avery, Esq., the employee not being present and not being represented, at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, June 25, 1913, at 11 A.M., and affirms and adopts the findings of the committee of arbitration, and finds that the employee is entitled to compensation at the rate of \$7 a week from March 10, 1913, the date of the last payment, to and including Oct. 27, 1913, a period of thirty-three and one-seventh weeks, amounting in all to \$232.

JAMES B. CARROLL.

DUDLEY M. HOLMAN.

DAVID T. DICKINSON.

EDW. F. MCSWEENEY.

JOSEPH A. PARKS.

CASE No. 200.

LEON NAGORNY, *Employee.*

LOOSE-WILES BISCUIT COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

EMPLOYEE LEAVES COMMONWEALTH. ABSENT THREE MONTHS WITHOUT COMMUNICATING WITH INSURER. AWARDED COMPENSATION DURING INCAPACITY.

This employee returned to the Commonwealth after an absence of three months, claiming that he was still incapacitated for work as the result of his injury. He had received compensation up to the date of his departure and had not, meanwhile, communicated with the insurer. An examination of his hand indicated that the injury had healed.

*Held*, that the employee was entitled to compensation during incapacity.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Leon Nagorny v. Employers' Liability Assurance Corporation, Ltd., this being case No. 200 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Walter Isidor, Esq., of Boston, representing the employee, and W. Lloyd Allen, Esq., of Boston, representing the insurer, heard the parties and their witnesses, in the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Friday, April 25, 1913, at 10 A.M.

Leon Nagorny, employed by the Loose-Wiles Biscuit Company (insured by the Employers' Liability Assurance Corporation, Ltd.) as general helper in the English department, as a time worker, and at average weekly wages of \$9 per week, on Monday, Aug. 5, 1912, at 11.30 A.M., was injured while cleaning the drum of mixer No. 1. His right hand was lacerated and he was treated at the Relief Hospital.

It was agreed that Nagorny had been paid his compensation up to the fifth week after the injury, not including the two

weeks' waiting period, on August 26, September 2 and September 9.

It developed by the testimony that shortly after the third payment by the Employers' Liability Assurance Corporation, Ltd., Nagorny went to New York; that while there he was treated by doctors at various clinics; that he did not communicate with the insurance company by letter or in any other way. He returned from New York early in December and claimed he was still disabled. He went to work on Christmas Day, 1912, and has been working ever since.

Examination of the man's hand showed that the recovery has been apparently completed.

The committee finds that Nagorny is entitled to four weeks' compensation in addition to the three weeks already received, from the insurance company, which would make a total of seven weeks' payment and nine weeks' disability, the insurance company to pay Nagorny \$18, being one-half his weekly wages, or \$4.50 per week, from Sept. 9 to Oct. 7, 1912.

EDW. F. MCSWEENEY.

W. LLOYD ALLEN.

WALTER ISIDOR.

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CASE No. 203.

EVERETT FORD, *Employee.*

AMERICAN ENGINEERING COMPANY, *Employer.*

TRAVELERS INSURANCE COMPANY, *Insurer.*

COMPENSATION CLAIMED FOR LOSS OF VISION. OCULISTS  
REPORT NO MERIT TO CLAIM OF EMPLOYEE. ENTITLED  
TO COMPENSATION DURING INCAPACITY FOR WORK. EM-  
PLOYEE INCLINED TO EXAGGERATE HIS TROUBLE.

The employee received an injury to his head, a wrench weighing about 3 pounds striking him and causing incapacity. The injury arose out of and in the course of his employment. He claimed "additional" compensation for loss of vision, and compensation on account of total incapacity for work. Two oculists testified that no injury to the eyesight was sustained, and an impartial physician reported that the employee was suffering from nervous exhaustion, due more to the lack of occupation and his habit of dwelling upon himself to the point of exaggeration. He suggested that a date be fixed beyond which compensation would not be paid.

*Held*, that the employee was entitled to compensation to a date definite.



Review of weekly payments before Industrial Accident Board.

*Decision.* — The Industrial Accident Board finds that no further compensation is due the employee, all incapacity on account of the injury having ceased on the date fixed by the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Everett Ford v. Travelers Insurance Company, this being case No. 203 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, William H. Sullivan, representing the employee, and William C. Prout, representing the insurer, being duly sworn, heard the parties and their witnesses at the Common Council Chamber, City Hall, Cambridge, Mass., Saturday, May 24, 1913, at 10 A.M., continuing Monday, June 16, 1913, at 10 A.M.

The committee finds that Everett Ford of 201 Third Street, Cambridge, a machinist, was employed by the American Engineering Company of Philadelphia, Pa., at the plant of the Boston Woven Hose Company at their new power house, Portland Street, Cambridge, on Jan. 17, 1913; that on that day, at approximately 3 o'clock in the afternoon, a workman, working above the injured man, dropped a wrench, weighing between 2 and 3 pounds, which struck him on the head; and that his average weekly wages were \$18 per week.

The committee finds from the evidence of two oculists who have given said Ford careful examination that no injury to his eyes was sustained by him which reduced their vision below one-tenth of normal with glasses as the result of this accident, and that he is not entitled to recover special compensation because of an alleged injury to his eyes.

Dr. Francis D. Donoghue, called in by the Board as an impartial physician, reported as follows: —

On his statement, and in view of the examination and considering the other examinations that have been made, there seems to be a large amount of introspection and dwelling upon his symptoms, exaggerating their importance in his own mind. While there is much that suggests exaggeration, I am unwilling to say that it is a pure case of malingering, but it

appears to be a case of nervous exhaustion, due more to the lack of occupation and his habit of dwelling upon himself to the point of exaggeration and to an apparent belief that there is something seriously wrong with his head. He has a marked degree of arterial change for a man of his age, and that is an additional factor which tends to prolong his difficulty.

I believe that the best prospect for this man's returning to work would be to give him a fixed sum, or to state a fixed date beyond which time compensation would not be paid, which might act as a mental brace to get him to make the effort which is now lacking.

According to the medical testimony and the report of Dr. Donoghue, the committee therefore finds that Everett Ford is still incapacitated and will not be able to return to work before Sept. 1, 1913, at which time his compensation, at the rate of \$9 per week, half his average weekly wages, shall cease.

DUDLEY M. HOLMAN.  
WILLIAM H. SULLIVAN.  
WILLIAM C. PROUT.

*Findings and Decision of the Industrial Accident Board on  
Review of Weekly Payments.*

This case came before the Industrial Accident Board on review of weekly payments, under section 12, Part III. of the Workmen's Compensation Act, on Thursday, Sept. 18, 1913, the employee having been receiving compensation weekly in accordance with the findings of the committee of arbitration, up to and including Sept. 1, 1913, at which time, the committee decided, his compensation should cease, without prejudice.

The compensation having been suspended by the insurer, the employee asked for this review, and due notice being given, the Industrial Accident Board heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Thursday, Sept. 18, 1913, at 2 P.M.

Dr. S. H. Littlefield testified that just prior to the hour set for the hearing he had examined the employee and could not find any evidence at the present time of an injury to the head. The employee had sustained a glancing blow in the back, and

there were no focal symptoms of any kind. His memory is excellent, he has no muscular disability and shows really a negative case. He shows some symptoms of arterial sclerosis, complains of his hearing and of a loss of vision in the right eye. The doctor stated the employee had no difficulty in responding to a general line of conversation, that he showed no signs of any paralysis, and that he seemed to be normal. There are no objective signs which show an injury to the head. The arterial sclerosis would account for many of the symptoms that are present. Sclerosis takes place in the drum of the ears besides the arteries. The things that he complains of are due to circulatory difficulties. In the opinion of the doctor, the trouble in the ears could be due to a sclerotic condition, which must have had a beginning before he met with the injury. The employee complains of the ear, dizziness, pain in the head, rushing of sounds and shortness of breath, and he feels that he is unable to work. All these things come from sclerosis except that the trouble in the head would be due to a high tension of the arterial system, the arteries losing their elasticity in arterial sclerosis. The doctor further testified that this seems to be a case clearly of arterial sclerosis and that loss of memory and slight attacks of dizziness are perfectly agreeable with this diagnosis. He had none of these symptoms before the injury.

The employee presented no evidence and the Board requested the Massachusetts General Hospital to make an impartial examination as provided by section 8, Part III. of the statute, asking for an opinion as to whether his present condition is due in any way to the injury received by him on January 17 last, and whether, in the opinion of the impartial physician making the examination, the employee is now incapacitated for work, and if so when the incapacity for work would probably cease.

Frederick A. Washburn, M.D., resident physician, under date of Sept. 19, 1913, reported as follows:—

He was examined in our out-patient department this morning, and it is the opinion of the physician who examined him that there is no organic cause resulting from the accident to account for his present condition. It is the further belief of the physician that he is not incapacitated for work at present by reason of his accident. He is not in good condition to resume work because he is depressed and because of arterial degeneration. He could do light work.

Upon the evidence introduced at the hearing and the report of the impartial physician, the Industrial Accident Board finds that the employee, Everett Ford, is not incapacitated for work as a result of the injury received by him on January 17 last, and that no further compensation is due him under the provisions of the Workmen's Compensation Act.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 205.

GAETANO CAMPITELLO, *Employee*.  
BROCKLEHURST & POTTER COMPANY, *Employer*.  
OCEAN ACCIDENT AND GUARANTEE CORPORATION, LTD., *Insurer*.

OFFER OF INSURER TO PAY FURTHER COMPENSATION DECLINED BY EMPLOYEE. LUMP SUM DESIRED. IMPARTIAL PHYSICIAN REPORTS NO INCAPACITY FOR WORK AS THE RESULT OF THE INJURY. COMMITTEE SO DECIDES.

This employee, seeing a train which had derailed several cars approaching him, jumped down an embankment and received an injury to his head as the result of contact with a bowlder. He was operated upon at a hospital and received compensation from the insurer for a period of twenty-two weeks, after which payments were suspended. The physician agreed upon by the attorneys for the parties stated that the employee was absolutely normal in every way. At the hearing, the representative of the insurer offered to pay additional compensation for a period of ten weeks, but the employee declined, desiring a lump sum payment of \$200 and his expenses to Italy. The committee of arbitration agreed to hold the case open for four weeks, compensation to be paid the employee in the interval. An impartial examination was arranged for and the report stated that there was no nerve injury or lesion to prevent the employee from working.

*Held*, that the payment of compensation by the insurer to May 30, 1913, was full and sufficient compensation for all incapacity resulting from the injury.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Gaetano Campitello v.

Ocean Accident and Guarantee Corporation, Ltd., this being case No. 205 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, James F. McGovern, Esq., 10 Huntington Avenue, Worcester, Mass., representing the employee, and Charles E. Lawrence, Esq., 24 Milk Street, Boston, representing the insurer, heard the parties and their witnesses in Committee Room No. 30, City Hall, Worcester, Mass., on Friday, May 2, 1913, at 10.30 A.M.

Gaetano Campitello, employed at railroad construction and grading in East Douglas, Mass., on Saturday, Sept. 29, 1912, while walking along the track, saw a train approaching which had several cars derailed; he became frightened and jumped down the bank, striking his head on a boulder. He was injured by a ragged cut on the head and had symptoms of concussion. He was treated by a Dr. Ela and remained away from work for sixteen days, after which he went to work and worked eighty hours, when he went to a hospital and had an operation performed upon him. The record of the St. Vincent's Hospital, Worcester, shows that when he was admitted he had a diagnosis of contusions of back and abdomen. The statement as made on the record is that he was admitted to the St. Vincent's Hospital after suffering for nearly six weeks with severe pain across back in lumbar region, caused by a fall down embankment of 40 feet; on landing, patient struck against a large rock. He tried to work after fall, but claimed he had to give up on account of pain, and came to the hospital for treatment Oct. 28, 1912, still suffering from this pain. He was operated on later.

After coming out of the hospital, Campitello claimed that he was unable to work, and the insurance company paid him twenty-two weeks' compensation, and then refused to make further payments, on the ground that he was able to work.

Dr. Charles F. Wheeler was agreed upon as an impartial doctor by the insurance attorney and the attorney for the injured man, and made an examination of Campitello at the hearing. It developed by Dr. Wheeler's testimony that the man

had two scars on his abdomen, one being for an appendicitis operation that had taken place a year and a half previous to this accident. On going to the hospital, Campitello complained of pain in that region and they opened him up again and found some adhesions from the original appendicitis operation. Dr. Wheeler said that as far as he could see the man was absolutely normal in every way. He complained of pains in his back and said he could not bend and walk without difficulty, but there was nothing objective on which to base a positive opinion.

At the hearing held in Worcester on the above date Mr. James T. Connolly, representing the insurance company, offered to pay Campitello ten additional weeks' compensation, from April 28, 1913, as payment in full of this disability. Dr. Wheeler advised the arbitrators that this was a very fair offer. The injured man refused to accept anything less than a lump sum of \$200 and his expenses to Italy, first class. The arbitrators decided to hold Campitello's case open for four weeks, or until May 30, his disability compensation from the Ocean Accident and Guarantee Corporation, Ltd., to continue to this date. On or about May 30 an impartial expert medical examination was to be made, to determine whether any disability still continued. On June 5 a statement of the case was submitted to the Massachusetts General Hospital. Campitello was examined by the surgeons and orthopedic surgeons at the Massachusetts General Hospital on June 7, according to the following report, received on June 9 from Dr. F. A. Washburn, resident physician, Massachusetts General Hospital:—

According to your request Gaetano Campitello was examined at the hospital to-day. He was seen both by the surgeons and the orthopedic surgeons. It is their opinion that there is no active process requiring treatment and there is no nerve injury or lesion to prevent his working.

The arbitrators find that as a result of an injury arising out of his employment on Saturday, Sept. 29, 1912, Gaetano Campitello, employed by Brocklehurst & Potter Company, insured by the Ocean Accident and Guarantee Corporation, Ltd., was disabled and unable to work. Compensation for this injury has been paid to Campitello by the Ocean Accident and Guarantee Corporation, Ltd., up to May 30, 1913, and the

arbitrators find that this is full and sufficient payment, under the Workmen's Compensation Law, for all disability arising from the injury of Saturday, Sept. 29, 1912.

EDW. F. MCSWEENEY.

CHARLES E. LAWRENCE.

*Dissenting Opinion.*

I, as an arbitrator, dissent from the report as signed above, and state that the employee has not been paid enough; that Dr. Barnes, the attendant physician, should have been consulted before any report was signed.

JAMES F. MCGOVERN.

CASE No. 206.

THOMAS GAFFNEY, *Employee.*

HENRY H. CLARK COMPANY, *Employer.*

TRAVELERS INSURANCE COMPANY, *Insurer.*

SALESMAN EN ROUTE TO HOME OF A PROSPECTIVE CUSTOMER ENTITLED TO COMPENSATION. INJURY AROSE OUT OF AND IN THE COURSE OF HIS EMPLOYMENT.

The employee was a salesman and, while crossing a driveway, slipped and fell, sustaining a fractured shoulder. He testified that he was on the way to the home of a prospective customer for the purpose of endeavoring to sell him a stove. The insurer claimed that he was not in the course of his employment at the time of the injury.

*Held*, that the employee was entitled to compensation, the injury arising out of and in the course of the employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas Gaffney v. Travelers Insurance Company, this being case No. 206 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, William H. Sullivan, representing the employee, and William C. Prout, representing the insurer, heard the parties at the Hearing Room

of the Industrial Accident Board, Pemberton Building, Boston, Mass., Monday, May 12, 1913, at 10 A.M. Louis S. Doyle, Esq., appeared for the insurance company.

It was admitted by Mr. Doyle that Gaffney was a salesman in the employ of the Henry H. Clark Company, but he would not agree that the said Gaffney was in the course of his employment at the time of his injury, about 2.30 P.M., Monday, Feb. 3, 1913, the employee receiving his injury while crossing a driveway near Jones & Marshall's restaurant, Merchants Row, slipping and falling, sustaining a fractured shoulder. Gaffney testified that at the time of the accident he was on the way to Chestnut Hill for the purpose of selling a stove to a prospective customer.

The committee finds that the injury arose out of and in the course of Gaffney's employment, and that he is entitled to the payment of a reasonable bill for medical and hospital services during the first two weeks after the injury, from February 3 to February 16, inclusive, and that he is entitled to compensation for partial incapacity from February 17 to May 12, inclusive, based upon half the difference between his old rate of wages, that is, \$16, and his new rate of wages, that is, \$10, or to the payment of \$3 a week during the period of partial incapacity; and to payment for further partial incapacity, based upon the rate of wages earned by him during the continuance of said partial incapacity.

JOSEPH A. PARKS.

WILLIAM H. SULLIVAN.

WILLIAM C. PROUT.

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CASE No. 207.

THOMAS JOHNSTONE, *Employee.*

LANCASTER MILLS, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

#### INCAPACITY FOR WORK. COMPENSATION DUE FOR A FURTHER PERIOD, IN ACCORDANCE WITH EVIDENCE.

The employee received an injury arising out of and in the course of his employment a bale of cotton falling on his leg and causing incapacity. Hospital treatment was provided, the employee leaving against the advice of the attending phy-



sician. Compensation was suspended on April 8, 1913, and the employee claimed further compensation was due, the incapacity continuing beyond that time.

*Held*, that the employee was entitled to compensation for a further period of two weeks.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Thomas Johnstone v. American Mutual Liability Insurance Company, this being case No. 207 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Amos T. Saunders of Clinton, Mass., representing the employee, and George L. Tobey, M.D., of Clinton, Mass., representing the insurer, heard the parties and their witnesses in the Selectmen's Room, Town Hall, Clinton, Mass., on Monday, May 19, 1913, at 10.30 A.M.

Thomas Johnstone, employed by the Lancaster Mills, at Clinton, Mass., at an average weekly wage of \$8.02, the Lancaster Mills being insured by the American Mutual Liability Insurance Company, on Feb. 11, 1913, while piling cotton, a bale of cotton standing on end fell over and struck him on the left leg below the knee. He worked the rest of the day and came in the next morning and went to the mill nurse, who advised him to see Dr. Goodwin, who sent him to the Clinton Hospital. Johnstone was put under ether and an X-ray taken of the injured leg. No fracture of leg could be detected. Dr. Goodwin testified that the X-ray showed that the small bone below the knee in the leg was bent, and he treated Johnstone just the same as though there was a fracture. Dr. Goodwin wished him to stay in the hospital longer than he did, but he would not do so, and left at the end of four weeks without the aid of crutches. The insurance company paid him disability payments for six weeks, or up to April 8, 1913, when payments were discontinued, because, in its opinion, the disability had ceased and Johnstone was able to go to work.

The arbitrators find that Johnstone is entitled to two addi-

tional weeks' compensation from April 8, or an additional payment of \$8.02, making a total disability payment, as the result of this injury, of \$32.08.

EDW. F. MCSWEENEY.

AMOS T. SAUNDERS.

GEO. L. TOBEY.

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CASE No. 208.

JOSEPH C. GAYNOR, *Employee.*

T. D. COOK & Co., INC., *Employer.*

STANDARD ACCIDENT INSURANCE COMPANY, *Insurer.*

CASUAL EMPLOYMENT CLAIMED. EMPLOYEE, WHOSE REGULAR OCCUPATION WAS THAT OF A WAITER, FATALLY INJURED WHILE SERVING BANQUET FOR CATERER WHO EMPLOYS NO REGULAR WAITERS. WIDOW ENTITLED TO COMPENSATION.

The employers, a catering firm, had a contract to serve a certain banquet and, not having a regular corps of waiters, engaged the employee, whose regular occupation was that of a waiter, and others to assist in serving it. It appeared that the employee was fatally injured while engaged in the usual course of the business of his employers, the serving of banquets being an important part of said business, and it being the custom for the said employers to engage men whose regular occupation was that of waiters to serve such banquets.

*Held*, that this was not casual employment, as claimed, and that the widow was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph C. Gaynor v. Standard Accident Insurance Company, this being case No. 208 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Thomas A. Prior, for the employee, and Thurston L. Smith, representing the insurer, being duly sworn, heard the parties and their wit-

nesses at the Hearing Room of the Industrial Accident Board on Thursday, May 8, 1913.

Counsel for plaintiff and defendant both agreed to the following facts:—

*First.*—That plaintiff's intestate's average weekly wage for one year preceding the date of his accident was \$15 a week.

*Second.*—That his widow, Emma G. Gaynor, is the duly appointed administratrix of his estate, and she was living with her husband at the time of his death according to section 7, Part II., of chapter 751, Acts of 1911, as amended by chapters 172 and 571, Acts of 1912. She is conclusively presumed to be wholly dependent for support upon the wages of her husband, Joseph C. Gaynor, and she was so dependent and therefore is entitled to be paid compensation at the rate of \$7.50 a week for a period of three hundred weeks from the date of the injury, provided that her husband was not a casual employee as defined in Part V., section 2, of the Workmen's Compensation Act.

*Third.*—That the accident happened at South Hadley, Mass., but that both sides waived the provision of section 7, Part III. of the act, and requested in writing of the Industrial Accident Board that this hearing should take place at Boston.

*Fourth.*—That the sole question before this arbitration committee was whether or not upon all the evidence the plaintiff's intestate was an employee within the meaning of the definition of this work as set out in Part V., section 2.

We find that Joseph C. Gaynor was a waiter and was employed by the T. D. Cook & Co., Inc., caterers, whose place of business is at 88 Boylston Street, Boston. The employment was under the following conditions and circumstances:—

Cook & Co. had a catering contract to serve a banquet at Mount Holyoke College, South Hadley, Mass., on Oct. 9, 1912, and one Francis W. Reeves, who had charge of all men doing outside catering work for T. D. Cook & Co., engaged Gaynor for this particular work at South Hadley on Tuesday, October 8, and told Gaynor that if he would report at the South Station the next morning he would then go to South Hadley with other waiters, and the wage for his work on this particular job was to

be \$4 and his transportation paid to South Hadley and return.

Gaynor reported at the South Station at 7 A.M. Wednesday, October 9, and with other waiters left for South Hadley, arriving there about 11.30 A.M. When the men arrived at the entrance to the college they were shown to a building where they changed from their street clothes into their dress suits, and were then shown to the building where the spread was to be served. It was while preparing to serve the lunch that Gaynor slipped and fell upon the floor receiving such injuries as ultimately resulted in his death.

We find that all the outside waiters of the T. D. Cook & Co. are what is known as call men; that this was the first time that Gaynor had ever worked for the T. D. Cook & Co.; that he was not hired for any other work than the particular work that he was doing at the time he met with his unfortunate accident; that when he got through his work of waiting upon the guests at Mount Holyoke College the Cook company would then have no further control over him, and it was optional with Gaynor whether he would or would not return to Boston. In other words, as the witnesses testified, when their work was finished (and it was finished at 5 P.M.) Gaynor would have been entitled to his \$4, whether he did or did not return to Boston, but that he would have lost the benefit of the mileage tickets had he not returned with the other waiters. In other words, he was his own master and not under the control of the T. D. Cook & Co. after 5 P.M. of Wednesday, October 9.

It further appeared in evidence that it was a part of the business of T. D. Cook & Co. to provide and serve banquets and dinners of the character it was called upon to serve at Mount Holyoke College at South Hadley on Oct. 9, 1912, and for such banquets and dinners they had no men who were regularly employed by them; that the custom of the catering business, when such banquets, luncheons or other meals are to be served, is that waiters are secured for those particular occasions by either hiring the men upon application made by the men themselves, who generally, as it appears in evidence, know when a caterer has a contract for such service, or by going to some place where waiters are in the habit of congregating looking for

opportunities for service; that a man would work for one caterer one day and another caterer the next day, and one the following day, and so on; that this is the usual custom; that the number of waiters varied, as the occasion demanded, — a large party might call for the employment of 50 or 75 waiters and a small one of 2 or 3 waiters, and it was practically impossible from the nature of the business for caterers to regularly keep a number of waiters upon their pay roll; and that the trade custom is to employ waiters who either apply directly or who are obtained for this purpose from one source or another, and it appears that Gaynor, like other waiters, worked for many employers during a day or a group of days.

We further find that Gaynor at the time he met with his accident was an employee within the meaning of the Workmen's Compensation Act, and was injured in the course of and arising out of his employment on Oct. 9, 1912; that death having resulted from the injury, the compensation shall be paid to his widow for three hundred weeks from the date of injury; and that the hospital and medical bills, amounting to \$90 during the first two weeks after the injury, shall be paid by the Standard Accident Insurance Company.

The foregoing evidence was all that was material to the question at issue.

At the close of the evidence the defendants requested the arbitration committee to make the following rulings: that upon all the evidence as a matter of law the plaintiff is not entitled to compensation under the Workmen's Compensation Act for the death of her intestate and for the reason that at the time he was injured his employment was casual as set out in Part V, section 2, of the Workmen's Compensation Act.

The arbitration committee refused to make such rulings, and the defendants duly accepted such refusal to rule, and there being some question as to just how the defendant could preserve his rights, it was agreed by the committee that any and all rights, so far as casual employment was concerned, were to be protected in the event of the case being taken to the Supreme Court.

DUDLEY M. HOLMAN.  
THOMAS A. PRIOR.

I dissent from the majority opinion for the reason that it seemed to me that upon all the evidence Gaynor was not an employee within the meaning of the word as defined in section 2, Part V. of the Workmen's Compensation Act, it being my opinion that this employment was casual, and therefore his widow was excluded from receiving any compensation under the act.

THURSTON L. SMITH.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, July 9, 1913, at 10 A.M., and affirms and adopts the decision of the committee of arbitration.

The Board further finds that the deceased employee, Joseph C. Gaynor, was a waiter in the employ of the T. D. Cook & Co., Inc., at the time he received the injury which resulted in his death; that this was the regular occupation of the said Joseph C. Gaynor; that the business of the said T. D. Cook & Co., Inc., was catering, and it was in the usual course of the business of the said company that the said Gaynor was injured; that the performance of catering contracts was a part of the usual business of the said T. D. Cook & Co., Inc.; that the said Joseph C. Gaynor was employed to perform his usual duties as a waiter in assisting in carrying out the contract which the said company had engaged to perform; that his status is set out in section 2, Part V., of chapter 751, Acts of 1911, as amended by chapters 172 and 571, Acts of 1912, which defines "employee" as follows: "Employee shall include every person in the service of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer", the acceptance of such catering contracts being in the regular course of the business of the employer, and the performance of the services of a waiter being the regular occupation of the employee.

The Board further finds that the widow, Emma G. Gaynor,

is entitled to the payment of \$7.50 a week from the Standard Accident Insurance Company for a period of three hundred weeks from the date of the injury, Oct. 9, 1912.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
EDW. F. MCSWEENEY.

CASE No. 212.

JOSEPH TATREULT, *Employee.*

GEORGE GAGNIER, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK. IMPARTIAL PHYSICIAN ASSISTS IN DETERMINING WHEN INCAPACITY ENDED.

The sole question involved was whether the employee was incapacitated for work at the time compensation was suspended by the insurer, or entitled to further compensation because of the continuance of the incapacity due to the injury. An impartial physician examined him and filed a report.

*Held*, that the employee was entitled to further compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Tatreault v. Contractors Mutual Liability Insurance Company, this being case No. 212 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, W. J. LaFrancis, representing the employee, and Joseph G. Roy, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Springfield, Mass., on Friday, April 25, 1913, at 2 P.M. Norman F. Hesseltine, Esq., appeared for the insurance company. W. J. LaFrancis acted as interpreter for the employee.

The only question in the case was the amount of disability, if any, that the man suffered, and the compensation, if any, he was entitled to.

This employee was injured on the twenty-sixth day of December, 1912, and has been paid compensation at the rate of \$9.75 per week up to the seventh day of March, 1913. On the twenty-eighth day of February he was examined by Dr. Fagnant of Springfield, an impartial physician selected by the Industrial Accident Board. Dr. Fagnant's report is as follows:—

Yours of the 26th inst. at hand; and, in reply, will tell you that I have yesterday gone to see Mr. J. S. Tatreault and have examined him carefully; and found out that he, at the time of the accident, has suffered from a severe concussion of the brain which undoubtedly has impaired the vitality of his system by the shock to his nerves; moreover, that, falling on his left side, he has received an injury to his whole side, but, in particular, to one of his ribs and the adjoining dorsal vertebra, which both are still sore to the touch and painful under a straining exertion; and that the injury to his rib, which a protuberance on said rib still indicates a lesion, has extended to the underlying pleura, wherein, although not sufficient to determine inflammation and cause a pleurisy, has produced such an irritation as to occasion a painful cough at the least exertion at first; and which, although dying off now, has left him with pleurodynia, which, under straining, gives him still, to-day, a painful stitch, which certainly incapacitates him for any and all the unavoidable, forcible and twisting exertions of his trade, but which, with proper and *necessary* treatment of his system, as well as of his injury, may get him entirely relieved in three or four weeks more.

BENJ. FAGNANT, M.D.

Relying upon the statement of Dr. Fagnant, we find that the injured employee is entitled to two weeks' compensation from the seventh day of March to the twenty-first day of March, amounting to \$19.50.

JAMES B. CARROLL.  
W. J. LAFRANCIS.  
J. G. ROY.



CASE No. 213.

TIMOTHY HARRINGTON, *Employee.*

J. C. COLEMAN & SONS COMPANY, *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

DOUBLE COMPENSATION CLAIMED. SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE EMPLOYER ALLEGED. ALLEGATION NOT SUSTAINED. EMPLOYEE ENTITLED TO COMPENSATION FOR INCAPACITY.

The employee claimed double compensation, alleging serious and willful misconduct on the part of a person exercising powers of superintendence. See No. 215 for statement of the evidence.

*Held*, that there was no serious and willful misconduct on the part of the employer, or a person exercising superintendence, and that the employee was entitled to compensation on account of incapacity.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Timothy Harrington v. Contractors Mutual Liability Insurance Company, this being case No. 213 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Walter S. Gerry, representing the insurer, and Alfred L. Fish, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Monday, May 5, 1913, at 10 A.M., and on Friday, June 6, 1913, at 10 A.M.

The above case was heard jointly with that of Patrick Devine and Daniel Moynihan, the latter of whom was fatally and the former seriously injured as the result of a cave-in at a sand bank on March 19, 1913, at about 8 o'clock in the morning. All three of the workmen were in the employ of J. C. Coleman & Sons Company, and the injuries arose out of and in the course of their employment. As in each of the other cases, a claim for double compensation was filed, the allegation being made that the injuries were received by reason of the serious and willful misconduct of the subscribers, or of a person regularly in-

trusted with and exercising the powers of superintendence, under section 3, Part II. of the Workmen's Compensation Act.

The evidence is outlined in the report of the case of Patrick Devine *v.* the Contractors Mutual Liability Insurance Company, this being case No. 215 on the files of the Industrial Accident Board.

The committee of arbitration finds, upon all the evidence, that there was no serious and willful misconduct on the part of the subscribers, the said employers, nor on the part of any person regularly intrusted with and exercising the powers of superintendence, and that the said Harrington, the employee, is entitled to the payment of compensation, based upon an average weekly wage of \$12 a week; that is, to the payment of \$6 a week from April 1, 1913, the fifteenth day after the injury, to May 6, 1913, upon which latter date the incapacity for work as the result of the injury ceased, or a total payment in all of \$30, in accordance with the provisions of the statute.

JOSEPH A. PARKS.  
WALTER S. GERRY.  
ALFRED L. FISH.

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CASE No. 214.

DANIEL MOYNIHAN (DECEASED), *Employee*.  
J. C. COLEMAN & SONS COMPANY, *Employer*.  
CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

CLAIM FOR DOUBLE COMPENSATION DISALLOWED.

See Case No. 215 below for evidence.

*Held*, that injury was not caused by reason of the serious and willful misconduct of the subscriber.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Daniel Moynihan *v.* Contractors Mutual Liability Insurance Company, this being case No. 214 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Walter

S. Gerry, representing the insurer, and Alfred L. Fish, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Monday, May 5, 1913, at 10 A.M.

This case is identical with that of Patrick Devine and Timothy Harrington, two fellow employees, in each of which the question of serious and willful misconduct was raised; and upon the evidence the committee of arbitration finds, as stated in the reports filed in these cases, that the subscribers, the said J. C. Coleman & Sons Company, are not guilty of serious and willful misconduct, as claimed under section 3, Part II. of the Workmen's Compensation Act.

The evidence was conclusive that the injury, which resulted in the death of this employee, arose out of and in the course of his employment. There was a claim for partial dependency filed on behalf of a brother and sister of the deceased, Cornelius and Mary Moynihan, but this claim was withdrawn, and the parties came to an agreement for the payment of \$200 as funeral expenses, under section 8, Part II. of the act.

The committee finds that the employee left no dependents, and approves of the payment of \$200 for funeral expenses as agreed to by the parties.

JOSEPH A. PARKS.  
WALTER S. GERRY.  
ALFRED L. FISH.

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CASE No. 215.

PATRICK DEVINE, *Employee*.

J. C. COLEMAN & SONS COMPANY, *Employer*.

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

DOUBLE COMPENSATION CLAIMED. SERIOUS AND WILLFUL MISCONDUCT ALLEGED ON THE PART OF THE EMPLOYER. SAND BANK CAVES IN AND THREE EMPLOYEES INJURED, ONE FATALLY. ALLEGATION NOT SUSTAINED AND EMPLOYEE ENTITLED TO COMPENSATION ON ACCOUNT OF INCAPACITY.

A sand bank caved in and three employees were injured, one fatally, a claim being made in each of the cases that the injuries were occasioned by the serious and willful misconduct of a person exercising superintendence, and that double

compensation was due under section 3, Part II. of the act. It appeared in evidence that the sand bank was very steep, and of peculiar formation, making the problem of guarding against such an accident a most difficult one. The method in use, the cutting off of the upper crust, seemed to be the only practical solution. It was customary to have men on hand whose duty it was to perform this work, and only through an error in human calculation was this duty deferred. There was no evidence of serious and willful misconduct.

*Held*, that the claim of serious and willful misconduct was not sustained, and that the employee is entitled to compensation on account of incapacity for work.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Patrick Devine v. Contractors Mutual Liability Insurance Company, this being case No. 215 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks, chairman, representing the Industrial Accident Board, Walter S. Gerry, representing the insurer, and Alfred L. Fish, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Monday, May 5, 1913, at 10 A.M., and on Friday, June 6, at 10 A.M.

Patrick Devine, the claimant, together with two others, Timothy Harrington and Daniel Moynihan, whose cases were heard jointly at the time and place herein stated, were injured, Moynihan fatally, while in the employ of J. C. Coleman & Sons Company, Boston, as the result of a cave-in at a sand pit. Double compensation was claimed under section 3, Part II. of the act, which provides that "if the employee is injured by reason of the serious and willful misconduct of a subscriber, or of any person regularly intrusted with, and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled."

The cave-in occurred March 19, 1913, at about 8 o'clock in the morning, and the City Hospital records gave the date of Devine's discharge as March 21, 1913. The records further indicated that he had a contusion of the back, had ventral hernia "as long as he can remember," that he had been buried to the neck in a landslide and was not released until the expiration of an hour and a half, "able to walk" when admitted, and that

he was "discharged, — relieved on request." Dr. Colin McDonald's testimony was in effect that he saw Devine for the first time on April 3, 1913, finding hernia and protrusion of the upper part of the abdomen, and the employee claiming inability to retain urine and the presence of pain in back. If hernia was a pre-existing condition, strain and suffering might have aggravated it. Dr. Sproules testified that his examination confirmed the City Hospital records; that he found no bladder or urinary trouble and no objective symptoms in the back.

Mr. Devine testified that he heard John Kelly, the foreman, tell Coleman, the employer, that the sand bank was not safe, and that the latter had instructed his foreman to "put some of the men up on top to knock some of the top down," in order to guard against a possible cave-in. James McCormick and Philip Elaney testified that they had not heard of any one warning the foreman or employer of any danger from a cave-in. Both occasionally inspected the condition of the bank with the purpose in mind of preventing any possibility of such a catastrophe. John Kelly, the foreman, testified that Devine only went to work the morning before the accident; that he was not aware of any danger to his men and always had their welfare in mind; that the upper portion of the bank was cut off at regular intervals to make working conditions safe for his employees; and that he had never known of a man working under his direction being caught in a slide before.

The committee of arbitration viewed the scene of the cave-in and found a very high sand bank, of peculiar formation, making the problem of guarding against such an accident a most difficult one. The method in use, the cutting off of the upper crust, seemed to be the only practical solution of the problem. It appeared that it was customary to have men on hand whose duty it was to perform this work, and that only through an error in human calculation, which was extremely regrettable and attended by very serious results, was the overhanging crust allowed to remain for a sufficient length of time to cause the death of one employee and injury, more or less serious, to two others.

The question now arises as to whether there was "serious and willful misconduct" on the part of the employer or his fore-

man. Did the employer willfully, that is, intentionally, misconduct himself; did he, deliberately and intentionally, that is, seriously and willfully, neglect to guard his employees from the possibility of this cave-in? The answer is no, that he did not seriously and willfully neglect to provide against this cave-in, because the evidence proves that he had regularly guarded against such a contingency in what appeared to be the only practicable manner available for the protection of his employees, and that the occurrence of the cave-in, at the time of the accident, was not in any fair meaning of the term attributable to the serious and willful misconduct of the employer or his foreman.

The committee of arbitration therefore finds, upon all the evidence, that the subscribers, the said J. C. Coleman & Sons Company, are not guilty of serious and willful misconduct, as claimed, under section 3, Part II. of the Workmen's Compensation Act; that the said Devine, the employee, was injured in the course of his employment on March 19, 1913, and was totally incapacitated for work as a result of said injury until May 6, 1913, when said incapacity ceased; that his average weekly wages were \$12 a week; that there is due him from the insurer, at the rate of \$6 a week, a total of \$30, and that Devine's present physical condition is not due to the injury of March 19 last, herein referred to.

JOSEPH A. PARKS.  
WALTER S. GERRY.  
ALFRED L. FISH.

CASE No. 217.

ANTHONY MCGAFFIGAN, *Employee.*

NORTHERN CONSTRUCTION COMPANY, *Employer.*

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer.*

"MAY AT HIS OPTION PROCEED." LETTER CLAIMING DAMAGES AGAINST INDEPENDENT WRONGDOER SENT ONE DAY BEFORE CLAIM FOR COMPENSATION FILED. THIS IS NOT AN ELECTION TO PROCEED. EMPLOYEE ENTITLED TO COMPENSATION UNDER ACT.

The employee, through his counsel, sent a letter to the Boston Elevated Railway Company claiming damages, and filed a claim for compensation with the Industrial Accident Board on Nov. 8, 1912, a day later. On Jan. 6, 1913, he

brought suit in the municipal court against the Boston Elevated, the court deciding that it had no jurisdiction. The insurer of the workman's direct employer having refused to pay compensation, the matter was brought to the attention of a committee of arbitration.

*Held*, that the letter sent on Nov. 7, 1912, was not an election to proceed, and the court deciding that it had no jurisdiction, the employee is entitled to compensation under the statute.

Review before Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Anthony McGaffigan v. Fidelity and Deposit Company of Maryland, this being case No. 217 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Harry C. Dunbar, representing the employee, and John A. Keefe, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., on Wednesday, April 23, 1913, at 4 P.M. Joseph Lovejoy, Esq., appeared for the employee, and H. Ernest Warren, Esq., appeared for the insurer.

2. It was agreed that the employee was injured Oct. 31, 1912, and returned to work Dec. 30, 1912, and, if entitled to any compensation, is entitled to six and four-sevenths weeks at \$5.25 per week, amounting to \$34.50.

3. The single question presented by this case is as follows: On Nov. 7, 1912, McGaffigan, through his counsel, sent a letter to the Boston Elevated Railway Company claiming damages for his injuries, and on Nov. 8, 1912, filed with the Industrial Accident Board a claim for compensation under the Workmen's Compensation Act, setting forth the time, place, cause and nature of his injury. On Jan. 6, 1913, he brought suit against the Boston Elevated Railway Company in the municipal court of Boston for the same injury. The Boston Elevated Railway Company filed a plea to the jurisdiction of the court, claiming that, inasmuch as McGaffigan had filed a claim for compensation under the Workmen's Compensation Act for this injury,

the court had no jurisdiction, and the court so decided; which decision has not been appealed from.

4. The insurer claimed that, under section 15, Part III. of the Workmen's Compensation Act, because of the fact that the employee had brought suit against the independent wrongdoer, to wit, the Boston Elevated Railway Company, under said section, he could not now proceed against the insurer, notwithstanding the court had decided that, because of his election originally to proceed under the Workmen's Compensation Act, he was deprived of any remedy he might have against the Boston Elevated Railway Company.

5. The committee of arbitration rules that McGaffigan is entitled to recover compensation under the act, and finds that he is entitled to recover for six and four-sevenths weeks' disability at \$5.25 per week, amounting to \$34.50.

JAMES B. CARROLL.

HARRY C. DUNBAR.

#### *Minority Report.*

I admit the facts stated in the majority report in the above entitled case as contained in paragraphs 1, 2 and 3, and dissent as to the facts in paragraph 4.

In the statement of facts as agreed to and submitted by counsel for McGaffigan and the insurer, it is set forth that McGaffigan by his counsel sent a letter on Nov. 7, 1912, to the Boston Elevated Railway Company claiming damages for his injuries, this being his original demand. On Nov. 8, 1912, he filed a claim with the Industrial Accident Board for compensation under the Workmen's Compensation Act. Afterwards McGaffigan followed up his original demand of Nov. 7, 1912, by commencing suit against said Boston Elevated Railway Company for damages, indicating his continued intention to proceed against the Boston Elevated.

At a hearing in the municipal court his case against the Boston Elevated was dismissed, on the ground that he had elected originally to proceed under the Workmen's Compensation Act, and was deprived of any remedy against the Boston Elevated.

In view of the facts in the case it is possible that the court decided the case under a misapprehension as to McGaffigan's



original election which was on Nov. 7, 1912, and not on Nov. 8, 1912, as the court indicated. It seems clear to me that under section 15, Part III., he having first made his original demand on the Boston Elevated and followed it with suit, that he first proceeded against the Boston Elevated and not under the compensation act, and is therefore barred from proceeding under the compensation act.

The fact that he lost his suit against the Boston Elevated does not restore to him any right to proceed under the compensation act.

The language of section 15, Part III., "The employee may at his option proceed either at law against that person, to recover damages, or against the association for compensation under this act, but not against both;" indicates that he must select which he shall proceed against, and he is bound by his selection. Our statutes are to be construed strictly, and to now allow the claim of McGaffigan under the compensation act would be granting to him a right which said section 15 directly prohibits. I am, therefore, of the opinion that McGaffigan is not entitled to recover under the Workmen's Compensation Act.

JOHN A. KEEFE.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Tuesday, May 13, 1913, at 3 P.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds that the letter sent by the employee, McGaffigan, through his counsel, on Nov. 7, 1912, was not an election to proceed at law against the Boston Elevated Railway Company under section 15, Part III. of the Workmen's Compensation Act, and that the claim for compensation filed by the said employee on Nov. 8, 1912, was an election to proceed under said section 15 for compensation under the act, notwithstanding the fact that on the 6th of January, 1913, he brought suit against the Boston Elevated Railway Company in the municipal court of Boston, the court deciding that it had no

jurisdiction because of the filing of his claim of November 7 with the Industrial Accident Board.

The Board further finds that the employee is entitled to compensation for the period of his total incapacity for work; that is, to the payment of \$5.25 a week for six and four-sevenths weeks, amounting to \$34.50.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 218.

SOPHIE REGAN, *Employee.*  
F. H. ROBERTS COMPANY, *Employer.*  
TRAVELERS INSURANCE COMPANY, *Insurer.*

AVERAGE WEEKLY WAGES. EMPLOYEE HAD BEEN WORKING FOR EMPLOYER ONLY A SHORT TIME. WAGES OF ANOTHER EMPLOYEE, EQUALLY COMPETENT, TAKEN TO ASCERTAIN CORRECT AVERAGE.

This employee had been working for her present employer but a short time when an injury occurred, said injury arising out of and in the course of her employment. The only question in dispute was that of average weekly wages. The average weekly wages of another employee, equally competent, who was "employed by the same employer in the same grade," were ascertained, \$12.45 weekly being said average.

*Held*, that the employee is entitled to compensation based upon this average weekly wage.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Sophie Regan v. Travelers Insurance Company, this being case No. 218 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Henry D. Crowley, representing the employee, and William C. Prout, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Thursday, May 22, 1913.

We find that Sophie Regan of Cunard Street, Roxbury, Mass., is employed by F. H. Roberts Company of 128 Cross Street, Boston, in the box department, and that while operating a staying machine in the box department her finger was caught in the machine while feeding it as usual and the forefinger on the right hand was badly crushed and a part of the tip was lost. There was no dispute as to the manner in which the accident happened.

The forelady testified that Mrs. Regan was as good an operator as Miss Sacks, a fellow worker, who had been employed for over a year. The insurance company raised the question of average weekly wage, as she was a time worker and was considered by them as a sort of spare hand, but it did not appear in evidence that she was hired other than as a regular worker. On days when there was plenty of work she was able to do practically the same amount of work as the older hands. Under Part V., section 2, where average weekly wages are defined, we find that she comes under the paragraph, "Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer."

On the certificate of F. R. Bowman, M.D., 211 Huntington Avenue, Boston, who states that he saw her on May 24, 1913, the finger was entirely healed, there was a slight deformity, and it was still somewhat sensitive. The usefulness of the finger was somewhat impaired for certain kinds of work, as sewing or embroidering, but it will not interfere with her ordinary duties.

We find, therefore, that Mrs. Regan was injured while in the employ of the F. H. Roberts Company by an accident which arose out of and in the course of her employment, and that she is entitled to one-half her average weekly earnings from the fifteenth day after the accident until Thursday, May 24. And as she had not worked for the F. H. Roberts Company for a long enough period to determine what her average weekly earnings were, the earnings of Miss Sacks, who is employed by the

same employer in the same grade, and had been for fifty-two weeks prior to the accident, must be considered in determining what her compensation shall be. It was found that Miss Sacks' average weekly earnings covering a period of fifty-two weeks, immediately prior to the accident, were \$12.45, and the employee, therefore, is entitled to receive as her compensation \$6.23 per week during her period of disability.

DUDLEY M. HOLMAN.  
HENRY D. CROWLEY.  
WILLIAM C. PROUT.

CASE No. 219.

MRS. DAVID TRUESDALE, WIDOW OF DAVID TRUESDALE, DECEASED (DEPENDENT), *Employee*.

DENNIS F. MCCARTHY, *Employer*.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF AN EMPLOYEE. EDEMA OF THE BRAIN AND LUNGS FOLLOWING FALL FROM A VEHICLE AND DELIRIUM TREMENS CAUSES DEATH. WIDOW NOT ENTITLED TO COMPENSATION.

The employee was intoxicated at the time of the injury, and had been drinking intoxicating liquor prior thereto while on duty and driving his cart. He was in an unsteady condition therefrom and lacking in control of and ability to manage himself, and would not have fallen but for this condition.

*Held*, that the employee was injured by reason of his own serious and willful misconduct, and that the dependent widow is not entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of David Truesdale (deceased) *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 219 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Edward A. McEttrick, representing the widow, and John G. Brackett,

Esq., representing the insurer, after being duly sworn, heard the parties and their witnesses at Brookline, Monday, May 19, 1913, at 10 A.M.

The committee finds that the employee, David Truesdale, a man of fifty-five years of age, on and before Aug. 17, 1912, was in the employ of said Dennis F. McCarthy as a driver of a street watering cart, and that on said Aug. 17, 1912, while engaged in filling the cart with water from a street standpipe he fell from the cart to the ground, striking on his head. He was taken to the Massachusetts General Hospital for treatment, and on Aug. 25, 1912, he died as a result of "edema of the brain and lungs consequent from a fall from a vehicle and delirium tremens," as stated in the medical report. There was no fracture of the skull, but the blow had caused a severe concussion.

The insurer claimed that the employee was in an intoxicated condition at the time of the accident, and that this caused his fall and injury. The evidence upon this was conflicting, and much testimony was introduced thereon. The committee is satisfied, and therefore finds that the employee was intoxicated at the time of the accident and had been drinking intoxicating liquor prior thereto while on duty and driving his cart; that he was in an unsteady condition therefrom and lacking in control of and ability to manage himself, and would not have fallen but for this condition. The committee, therefore, finds that he was injured by reason of his serious and willful misconduct, and that the dependent is not entitled to receive compensation.

In reaching the above decision upon the conflicting evidence as to intoxication, the evidence which seemed to the committee to have the greatest weight and probative force was that showing that the deceased had been seen shortly before the accident standing with a bottle in his hand about half full of liquor of the color of whiskey, and asking a witness if he did not want to have a drink, and conducting himself in an intoxicated manner while doing this on a public street; and the further evidence that immediately after the accident his employer took possession of the team and found an empty bottle under a blanket on the driver's seat with a small amount of whiskey left therein.

Although the medical opinion was conflicting, the committee

finds that edema was produced in its fatal form by the injury and the shock, which excited the delirium tremens, and that but for the serious and willful misconduct of the employee as aforesaid the dependent would have been entitled to compensation.

It was agreed and the committee finds that the average weekly wages of the deceased at the time of his injury were \$12.

DAVID T. DICKINSON.

JOHN G. BRACKETT.

*Dissenting Report.*

After a careful consideration of the evidence the undersigned does not agree with the findings of the majority of the committee that the deceased was intoxicated when he fell from his cart, and was, therefore, injured by reason of his "serious and willful misconduct," for the following reasons: —

1. The burden of showing that the deceased was intoxicated when he fell from his cart was on the insurer, and no such proof was submitted by the insured.

2. In all the witnesses who testified there was no direct testimony that the man was intoxicated. Evidence was given by the employer, McCarthy, that after he had driven his watering cart back to his stable, about half a mile from the scene of the accident, and had put up his horses, upon removing the blankets from the seat he found a pint bottle in which remained a small amount of whiskey. No evidence was submitted to show that this bottle had not been placed there after the accident, or that it had not been there a week or more previous to the accident.

3. The testimony relied on by the majority of the committee as having the "greatest weight and probative force" was that of John Reynolds, a laborer employed in the street department of the town of Brookline. Reynolds testified that he was employed on Cypress Street and was near the scene of the accident about fifteen or twenty minutes previous to the time Truesdale fell; that Truesdale pulled out of his pocket a pint bottle about one-half full of some form of beverage, and offered to him (Reynolds) a drink; that he did not see Truesdale take a drink,

and that he did not believe that Truesdale was at that time intoxicated.

At the hearing before the committee the representative of the deceased employee was requested to submit to the committee the court record of this John Reynolds, but the decision was arrived at previous to receipt of this information. The records of the municipal court of Brookline show that since 1903 the said John Reynolds had a court record of 18 convictions for drunkenness out of 24 arrests.

4. To combat this testimony were the testimony of five totally disinterested witnesses. Hugh W. McCracken and Harry McCracken, who were talking with the deceased five or ten minutes previous to the accident, testified that they saw no evidence of intoxication. Dr. Fallon, who dressed the injured man's wounds at the police station, testified that he detected no odor of liquor about the deceased, as did also Police Officer Joseph Carroll, who placed the deceased in the ambulance, and Mr. John H. Lacey, a bystander, who assisted the officer and who spoke with the injured man after the accident. In addition to this, report of the examination at the Massachusetts General Hospital, made when the injured man was admitted, shows in the entry, "breath foul." The fact that the examining physician recorded his breath and made no note of presence of the odor of alcohol indicates that none was present.

In the absence, therefore, of direct testimony that the man was intoxicated and the circumstantial evidence submitted by the insured, an interested party, and Reynolds, whose court record does not impress one with his credibility as a witness, and upon the evidence of the five disinterested witnesses indicating that the man was not intoxicated, the undersigned cannot find that David Truesdale came to his death by reason of his "serious and willful misconduct."

As the undersigned agrees with the majority of the committee on the other points, he finds that the dependent of David Truesdale is entitled to compensation under the act.

EDWARD A. McETRICK.

CASE No. 222.

EUGENE A. MAXWELL, *Employee.*

THE SPOOL COTTON COMPANY, *Employer.*

OCEAN ACCIDENT AND GUARANTEE CORPORATION, LIMITED, *Insurer.*

CLAIM DISMISSED BECAUSE OF LACK OF JURISDICTION. EMPLOYER OF CLAIMANT NOT COVERED UNDER THE WORKMEN'S COMPENSATION ACT.

The employee, a salesman for The Spool Cotton Company, requested a hearing on his claim for compensation, and it developed that the employer was not insured under the Workmen's Compensation Act, insurance only being carried covering the liability to the public on account of injuries resulting from the operation of the automobile which was in charge of the salesman at the time he was injured.

*Held*, that the employee was not covered by insurance under the Workmen's Compensation Act, and the claim was dismissed because of lack of jurisdiction.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Eugene A. Maxwell v. Ocean Accident and Guarantee Corporation, Limited, this being case No. 222 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, William T. Atwood, representing the employee, and Charles E. Lawrence, representing the insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Saturday, May 17, 1913, at 10 A.M.

Eugene A. Maxwell, a salesman in the employ of The Spool Cotton Company, 315 Fourth Avenue, New York City, received internal injuries on Wednesday, Oct. 23, 1912, about 10 o'clock A.M., while operating an automobile, the automobile "turning turtle" and falling on him.

It developed at the hearing that the Ocean Accident and Guarantee Corporation, Limited, had written a policy of insurance, in the name of Eugene A. Maxwell and The Spool



Cotton Company, covering their liability to the public on account of injuries resulting from the operation of the automobile. Under a misapprehension Maxwell filed a claim for compensation, and not being able to agree with the insurer requested the formation of a committee of arbitration.

The committee finds that Maxwell was not covered by insurance under the Workmen's Compensation Act, and dismissed the claim because of lack of jurisdiction.

JOSEPH A. PARKS.  
CHARLES E. LAWRENCE.  
WILLIAM T. ATWOOD.

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CASE No. 223.

MICHAEL CHEEVERS, *Employee*.  
WILLIAM A. PIERCE, *Employer*.  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND, *Insurer*.

INDEPENDENT CONTRACTOR NOT ENTITLED TO COMPENSATION.  
PROPRIETOR, INJURED WHILE DRIVING HIS OWN TEAM,  
ENGAGED IN THE COURSE OF HIS OWN BUSINESS AND IS  
NOT AN EMPLOYEE. FINDINGS OF THE COMMITTEE OF  
ARBITRATION REVERSED.

The injured workman was in the general business of teaming, as a proprietor on his own account, owning horses and wagons and employing men to drive and work with them. While unloading coal from his own cart, the workman received an injury.

*Held*, that he was entitled to compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board reversed the decision of the committee of arbitration and finds that the injury was sustained in the course of the business of the claimant, and that he was not entitled to compensation.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Michael Cheevers v. Fidelity and Deposit Company of Maryland, this being case No. 223 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, John W. Kelley, representing the employee, and L. Wallace Hall, representing the insurer, after being duly sworn, heard the parties and their witnesses at Pittsfield, Thursday, June 5, 1913, at 1.30 P.M.

The committee finds that said employee on Feb. 28, 1913, received an injury arising out of and in the course of his employment. The employer owned and conducted a coal yard and retail coal business in Pittsfield. The employee owned and conducted a teaming business there, having three or four separate horses and teams, and doing rough teaming. He employed several men to work with these horses and teams, besides working with them himself, and did work for various parties in the vicinity.

He had been employed by this employer, William A. Pierce, at different times and periods in 1911, 1912 and 1913. He did this work with his own horse and team, driving it himself. He put coal into bags at Mr. Pierce's yard and lifted them into his cart, and sometimes filled his cart in bulk from the chute, and usually worked in doing this together with another laborer employed by Mr. Pierce.

His employer directed him what to do, giving him written slips with the names and addresses of the purchasers, and with directions to assist in carrying and putting the coal into the houses, and to receive and bring back the money in payment from some of the purchasers. The man who assisted him in loading went with him to assist in putting the coal into the houses. When Mr. Pierce wanted him to do this work he would say to Cheevers, "I want you to come up and help me." Mr. Pierce was asked in his examination by the insurer at the hearing, "When you said to Cheevers to come and help you, would he have the right to send another man?" and Pierce replied, "No, I wanted Cheevers because he knew how to handle coal."

Pierce paid the helper and Cheevers for this work, paying Cheevers \$5 a day for himself and the team, and hired Cheevers for this general work for no fixed duration of time and for no specified job, and Cheevers worked the same as any other of

Pierce's regular men, under his orders, loading, driving and putting in coal.

During the last period when Cheevers was thus working he began on Feb. 7, 1913, and worked on February 7, 8, 10, 11, 12, 13, 15 and 25, and before this the last period was Feb. 1, 2, 5, 6 and 7, 1912.

Cheevers fell from his wagon while delivering coal as aforesaid on Feb. 25, 1913. Another of Cheevers' men tried to do this work for Pierce on the following day in his, Cheevers' place, but was not able to do the work satisfactorily for Pierce, and was not further employed. The end of Cheevers' right clavicle bone at the shoulder was fractured by the fall and the shoulder dislocated.

The insurer contended that this employment and work of Cheevers when hurt was that of an independent contractor, and was casual. The committee finds that in doing this work Cheevers was so under the direction and control of Pierce that the relation between them was that of master and servant, and that the employment when he was injured was not casual.

It was agreed and found that the average weekly wages of Cheevers at the time of the injury, if he was a servant of Pierce, were \$14 per week.

The committee finds that the employee was wholly incapacitated for work for a period of six weeks following the first two weeks after the injury, and that there is due him from the insurer as compensation the sum of \$42 and \$25 as his reasonable medical expenses, incurred during the first two weeks after the injury.

DAVID T. DICKINSON.

J. W. KELLEY.

I hereby dissent from the above report and its finding on the ground that the said Michael Cheevers was not an employee of the said William A. Pierce, also for the further reason that the employment was not regular but casual within the meaning of Part V., section 2, of the so-called Workmen's Compensation Act, and for either and both of which reasons I find that he is not entitled to medical services or compensation under the so-called Workmen's Compensation Act.

L. WALLACE HALL.

*Findings and Decision of the Industrial Accident Board on Review.*

This case was duly submitted to the Industrial Accident Board upon briefs of counsel on a review from the decision and report of the arbitration committee.

The Board, upon the facts found by the committee, believes that an error of law was made in the conclusion of the committee, and accordingly reverses its decision. This reversal is made in accordance with the decisions in *Hunt v. New York, New Haven & Hartford Railroad*, 212 Mass. 102 at 107; *Hussey v. Franey*, 205 Mass. 415; *Shepard v. Jacobs*, 204 Mass. 110; *Delorey v. Blodgett*, 185 Mass. 126; *Driscoll v. Towle*, 181 Mass. 416 at 418-419.

Cheevers, the injured man in this case, was in the general business of teaming, as a proprietor on his own account, owning horses and wagons and employing men to drive and work with them.

According to the above decisions, and as stated with particular clearness in *Hussey v. Franey* and *Driscoll v. Towle*, it is held to be an implied understanding that the proprietor of such a teaming business retains the control of his horses and wagons when in use, and of their loading and unloading, and is therefore an independent contractor in doing such work, and that if he sometimes does work incidental to his hiring, at the request of his contractee, outside the general scope of the business of his teaming, but, nevertheless within its "penumbra," these outside tasks do not make him the general servant of the contractee.

As Cheevers received his injury while he was unloading the coal from his cart, such injury was therefore sustained in the course of his own business, and the insurer of Pierce, his contractee, should not be held liable therefor, and such finding and decision is accordingly made, reversing that of the committee.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 224.

JAMES ARTHUR, *Employee.*

STAPLES COAL COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer.*

DISEASED CONDITION ACCELERATED BY INJURY. AGREEMENT  
ARRIVED AT BETWEEN EMPLOYEE AND INSURER APPROVED  
BY COMMITTEE.

The employee had been suffering from a diseased foot for four or five years and alleged, as a result of being thrown from a coal wagon, that it became necessary to amputate his leg. The records of the Massachusetts General Hospital and the Boston City Hospital showed that the employee's trouble began in 1896 and was of such a character that it would ultimately result in the loss of his leg. The insurer and the employee came to an agreement to pay and accept thirteen weeks' compensation in full for the incapacity due to the injury, this being the period of probable acceleration of diseased condition.

*Held*, that the injury accelerated the incapacity by a period of thirteen weeks, and that compensation is due the employee for said period of thirteen weeks.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of James Arthur v. Employers' Liability Assurance Corporation, Ltd., this being case No. 224 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney of the Industrial Accident Board, chairman, W. Lloyd Allen, representing the insurer, and Jacob Isaacs, representing the employee, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Monday, June 2, 1913.

James Arthur, colored, thirty-eight years old, living at 30 Village Street, Boston, a teamster employed by the Staples Coal Company, of Boston, Mass., claimed that he was injured by being thrown from a coal team upon which he was working on or about Feb. 11, 1913, this being the second injury of a similar nature which he had received within thirty days prior to February 11.

Arthur claimed that he had had a sore foot since 1896, which for four or five years had been an open wound which he had to bathe every night. He alleged that, as a result of being thrown from his coal team, the old injury had become aggravated, and he was obliged to go to the City Hospital, where his leg was amputated on March 1.

There was no evidence except that given by Arthur himself to show that he was thrown from the coal team while in the course of his employment at or about the time stated. The records of the Massachusetts General Hospital and the City Hospital showed that Arthur's trouble which began in 1896 or thereabouts was of such a character that it would ultimately result in the loss of his leg in any case.

Assuming that his story of the two falls from the team was true, although at the hearing there was no corroboration of this, it would have only accelerated the time when he would have been totally disabled. Under the circumstances the insurance company, while disclaiming responsibility for the loss of Arthur's leg, as due to an injury arising out of his employment, in view of the possibility that it might have been accelerated by possible injury in his employment, offered to allow thirteen weeks' disability in full and complete settlement of the case. This was accepted by the counsel for the injured man as satisfactory.

The committee of arbitration, therefore, finds that as the result of an injury arising out of and in the course of his employment, James Arthur, while employed by the Staples Coal Company, accelerated the disability resulting from an existing diseased condition of his right foot by a period of thirteen weeks, and that he is entitled to the payment of one-half his average weekly wages of \$14, or \$7 per week, for thirteen weeks, from Feb. 11, 1913, or a total of \$91, this being full and complete payment for any disability which resulted from this injury.

EDW. F. MCSWEENEY.

W. LLOYD ALLEN.

JACOB ISAACS.

CASE No. 230.

OTTO F. JOHNSON, *Employee.*

WADSWORTH, HOWLAND COMPANY, INC., *Employer.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

**LEAD POISONING A PERSONAL INJURY. EMPLOYEE, WHOSE INCAPACITY FOR WORK IS DUE TO LEAD POISONING ARISING OUT OF AND IN THE COURSE OF HIS EMPLOYMENT ENTITLED TO COMPENSATION.**

The employee, a paint grinder by occupation, seventy-two years of age, had been employed at his trade for a period of more than twenty years. The quarters in which he worked were dark, poorly ventilated and lacking in preventive devices which might easily have been installed. The committee of arbitration reports that "it is agreed that a man may be poisoned by lead, and if the body is kept in good condition he may be able naturally to eliminate this poison." In this case, however, on account of grief for the loss of his wife, coupled with old age, the employee "became physiologically unable to withstand the influence of the poison, due to lead, constantly introduced into his system during his employment after July 1, 1912, the result being shown in his loss of weight and other symptoms culminating in a condition of secondary anemia, which brought about his inability to work and caused him to be disabled since March 13."

*Held*, that the employee is entitled to compensation on account of incapacity for work due to lead poisoning, said lead poisoning being a personal injury arising out of and in the course of his employment.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Otto F. Johnson v. London Guarantee and Accident Company, Ltd., this being case No. 230 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney, chairman, representing the Industrial Accident Board, Robert N. Turner, Esq., of 631 Tremont Building, Boston, Mass., representing the employee, and N. P. Sippelle, Esq., of 6 Beacon Street, Boston, Mass., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber,

City Hall, Malden, Mass., on Monday, May 11, 1913, at 10 A.M.

Otto F. Johnson, seventy-two years old, living at 11 Cross Street, Malden; occupation, paint grinder; average weekly earnings, \$11; employed by the Wadsworth, Howland Company, Inc.; working at the plant at Bell Rock, Green Street, Malden, the Wadsworth, Howland Company, Inc., being insured under the Workmen's Compensation Act by the London Guarantee and Accident Company, Ltd. Otto F. Johnson claims that because of an injury arising out of and in the course of his employment, to wit, lead poisoning, he has been unable to work since March 13, 1913.

Dr. C. S. J. McNeil, 143 Main Street, Malden, testified that he attended Johnson on March 13; examined and prescribed for him. Johnson complained of a chilly sensation over his body, with cramps in his arms, legs, fingers and toes. He had constipation one day and colic and diarrhoea the next. Dr. McNeil found a blue line at the junction of the teeth and gum. Johnson had loss of appetite; temperature, 98; pulse, 64, very low, with a respiration of 18. He had the sweetish odor to his breath characteristic of plumbism. He had never had any of the foot or wrist drops symptomatic of lead poisoning, but had pain in his ankle and wrist joints. He had marked muscle tremors. Examination of Johnson's blood showed secondary anemia. The red corpuscles were only one-third normal, the red cells being pale and bleached. The hæmoglobin averaged about 55, as compared to a normal of 90 to 95. The white corpuscles were 15,000, as compared with a normal of 8,000 to 10,000. The specific gravity of the urine was 1,025, with  $\frac{1}{2}$  per cent. of sugar. The employee, Johnson, was eating a great deal of sugar and using Copenhagen snuff. When he discontinued these, the sugar condition disappeared, so Dr. McNeil concluded that this manifestation was rather an acute physiological condition than a chronic one. The diagnosis he made of Johnson after this examination was of secondary anemia, for which he could assign no other cause except lead poisoning. The characteristic symptoms of lead poisoning are diarrhoea, colic, constipation, blue line at junction of the teeth and gums, and wrist and foot drop; other symptoms, shooting pains and



sweetish odor to the breath, sweetish taste in mouth, are also characteristic of lead poisoning, the blue line on the gums being an almost positive test. The wrist and foot drop, which were not manifested in Johnson's case, comes only after the disease has become generalized and the nerves have become diseased. Regarding the time this condition had been under way, Dr. McNeil could only give as his opinion that it might have been coming on for some time, but the condition he found in Johnson's case could in all probability have arisen within a matter of months. Lack of food, overwork, age and other causes might have brought about a lowering of resistance which would have resulted in causing the poison already in the system to bring about the diseased condition shown in his case.

Otto F. Johnson, the claimant, testified that he was seventy-two years old on the 13th of March; had been in this country since 1889, and had been working for the Wadsworth, Howland Company, Inc., since 1892, grinding lead the whole time. About fourteen years ago had some signs of lead poisoning and had stomach trouble since then, but not much. He had two children, one girl and one boy. His wife had died October 2 last, which had a great effect on him. Mr. Johnson could not testify exactly when he began to feel sick, but thought it was some time during last autumn, after he changed to the "new shop;" there was more air in the old place where he worked, the new place where he worked being more closed in. He was the only grinder in that room, but there were other men working there. About three or four weeks after he moved into the new factory he began to feel run down, and within three weeks thereafter had lost 17 pounds. He could not eat, the skin came off the inside of his mouth, he felt "funny" in the legs and ears, and his teeth loosened. He worked for a long time after he got sick, but at last got so weak that he had to stop. Johnson admitted that he had been in the habit of using a form of tobacco called Copenhagen snuff. His lunches were usually eaten at the factory, his daughter bringing his lunch to the factory about quarter of twelve, which he would eat in the same room where he worked, or an adjoining room.

The question to be determined in this case is whether the lead poisoning is an injury as contemplated in the Workmen's

Compensation Act, and if so, whether it occurred after the act went into effect, July 1, 1912.

The arbitrators visited the Wadsworth, Howland Company, Inc., factory and inspected the quarters in which Johnson worked, remaining during the lunch hour to see the methods pursued by fellow workmen who were working in lead before and during their noon meal. They found that while there were facilities for the men washing their hands, considering the fact that these men were working in a dangerous poison, these facilities were inadequate; the workmen were, generally speaking, careless about removing lead from their fingers before they began to eat their lunch, and it was probable that under these conditions lead was constantly introduced into the system during the lunch hour. The room in which Johnson worked was dark. Between the machines on which he worked and the windows opening to the air was a raised platform, on which there were other machines; both ventilation and light were very poor and the dry lead in the form of dust could be, and probably was, inhaled during working hours.

The testimony shows that Johnson is an old man, seventy-two years of age, who had been constantly working at his trade of lead grinding for over twenty years. It is probably true from the testimony that at some time in the past he had acute attacks of lead poisoning, but the only case remembered was an attack about fourteen years before the 1st of July, 1912. It is agreed that a man may be poisoned by lead, and if the body is kept in good condition he may be able naturally to eliminate this poison. In the autumn of last year Johnson's wife died. It is apparent that this death had a great effect on him. The arbitrators believe that as a result of his grief, coupled with his age, he became physiologically unable to withstand the influence of the poison, due to lead, constantly introduced into his system during his employment after July 1, 1912, the result being shown in his loss of weight and other symptoms culminating in a condition of secondary anemia, which brought about his inability to work and caused him to be disabled since March 13.

The arbitrators find that while the management of the Wadsworth, Howland Company, Inc., is apparently kindly disposed

towards its employees, and willing to protect them from harm, there are not sufficient precautions taken, or facilities afforded, to induce or compel these employees to eliminate from their hands and clothing during the noon meal hour the lead which they have accumulated during their work. The factory conditions at the Malden plant are such that employees are subject to the danger of taking lead into their systems, where it remains, awaiting only a lowering of vitality to manifest itself in disease and disability, as in Johnson's case.

The arbitrators, after full consideration of all the facts, find that the lead poisoning under the conditions is an injury arising out of and due to Johnson's employment.

The arbitrators find that the quarters in which Johnson worked were dark, poorly ventilated, and the preventive devices which might easily have been installed to protect the employees are lacking.

The arbitrators find, therefore, that Otto F. Johnson is suffering from an injury arising out of his employment and is, in consequence, entitled to disability compensation of one-half his average weekly wages, or \$5.50 per week, during disability, beginning March 13, 1913.

EDW. F. MCSWEENEY.

ROBERT N. TURNER.

#### *Dissenting Opinion.*

I herewith submit dissenting opinion from the findings of the majority of the arbitrators in the above entitled action, and assign as reasons therefor the following:—

1. On page 2 of the report at line 5, Dr. McNeil's statement should be stated as follows:—

That in his opinion in all probability the lead-poisoning condition had existed in Johnson's system for a long time prior to the 1st of July, 1912, or ever since Johnson's attack of lead poisoning fourteen years previously, but that the condition in which he found Johnson might have arisen within a matter of months.

2. On page 2, paragraph 2, after the word "Copenhagen" the following words should be added: this snuff was used frequently during working hours. Its quality and method of use

would furnish a ready medium for transmitting the lead poison to Johnson's mouth and stomach.

3. Under section 4, as to facilities for washing furnished for the men. A fair and correct statement should be that "the facilities for washing may not have been of the best, but they were adequate if properly used by the men." Under the same paragraph the statement that the "room in which Johnson worked was poorly ventilated." This statement is incorrect, as the said room was as well ventilated as conditions required and, if anything, better ventilated than the room in which Johnson previously worked.

4. It is not agreed that a man may be poisoned by lead, and if the body is kept in good condition he may be able naturally to eliminate this poison. Medical opinion was to the effect that the poison was not eliminated from his system, but if his body was kept in good condition he might for a long time counteract the effects of the poisoning, but that the only practical way for the lead poison to be eliminated is by the use of certain drugs.

5. That it does not appear affirmatively that the said Johnson ever fully recovered from the attack of lead poisoning which occurred some fourteen years before, or that the lead then in his system was ever fully eliminated, or that the illness of March 13, 1913, was not due to the latent effects of the previous attacks.

6. That it was not shown affirmatively from what source his lead poisoning arose, or that it did not arise wholly or in part from his habit of taking Copenhagen snuff.

7. That the injury complained of is not such a one as is contemplated by the Workmen's Compensation Act.

8. That it was not apparent that the death of said Johnson's wife in the fall of 1912 had any bearing whatever upon his lead poisoning on March 13, 1913.

N. P. SIPPRELLE.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room, Pemberton Building, Boston, Mass., Thursday at 10 A.M., and

affirms and adopts the findings of the committee of arbitration.

It is agreed, as a matter of fact, that the employee, Otto F. Johnson, is incapacitated for work as a result of plumbism, or lead poisoning. There were three issues presented to the Board for its consideration: —

*First.* — Was this lead poisoning due to, and did it arise out of and in the course of, his employment?

*Second.* — Did the injury occur after July 1, 1912, the date upon which the Workmen's Compensation Act became effective?

*Third.* — Is lead poisoning, or plumbism, arising out of and in the course of the employment a "personal injury" within the meaning of section 1, Part II.?

It appears that Johnson had been employed by the Wadsworth, Howland Company, Inc., for more than twenty years as a lead grinder, and was so employed up to March 13, 1913, when he was unable to continue at his labor because of his physical condition, due to the results of lead introduced into his system.

It appeared in the evidence before the committee of arbitration that Johnson had been afflicted with lead poisoning fourteen years ago, but apparently had recovered and had had no recurrence of this disease until he was finally disabled on or about March 13, 1913.

It is understood by science that in lead intoxication, while the eliminating processes of the human body equal the absorption of lead, no harmful result is necessarily noticeable; but when elimination fails, storage of lead in the human system will take place, which may continue for some time before symptoms of poisoning may be observed. Stored in the tissues in an insoluble form, this lead may cause little or no inconvenience, but the individual in this condition is standing, nevertheless, on the brink of a precipice, over which he may be precipitated by many causes, such as the administration of a few grains of potassium iodine for some other illness; mental or other suffering causing a lowering of vitality (Johnson lost his wife by death some four or five months prior to March 13, 1913); the natural, physical changes due to advance of years (Johnson is seventy-two years old), etc. In short, it appears that Johnson had been, for twenty years, absorbing lead poison

during his occupation, which had been stored up in his system, and which absorption continued for eight months after the act went into effect, when, elimination failing, the poison stored up manifested itself in the personal injury and the incapacity which resulted therefrom.

The Board finds:—

*First.*—That the personal injury from which Otto F. Johnson is suffering arose out of and in the course of his employment.

*Second.*—That there has been an absorption of lead poison since July 1, 1912, and that the date when the accumulated effects of this poisoning manifested itself, and Johnson became sick and unable to work, was the date of the injury, which is, consequently, subsequent to July 1, 1912.

“Personal injury,” as used in the Workmen’s Compensation Act, is any injury or damage or harm or disease which arises out of and in the course of the employment which causes incapacity for work and takes from the employee his ability to earn wages, the act providing for the payment of compensation “while the incapacity for work resulting from the injury is total,” based upon half the average weekly wages of the employee, and “while the incapacity for work resulting from the injury is partial,” based upon “one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter,” thus making it clear that the law was intended to provide for the payment of compensation for a “personal injury” which causes incapacity for work. (*Kelly v. Auchenlea Coal Co., Ltd.*, 4 B. W. C. C. 417; *Sheerin v. Clayton & Co.*, 3 B. W. C. C. 583; *Yates v. South Kirby, Featherstone & Hemsworth Collieries, Ltd.*, 3 B. W. C. C. 18; *Alloa Coal Co., Ltd., v. Drylie*, 6 B. W. C. C. 398; *Martin v. Manchester Corporation*, 5 B. W. C. C. 259.)

Johnson’s lead poisoning is, within the letter and spirit of the Workmen’s Compensation Act, a personal injury arising out of and in the course of his employment, which has impaired the soundness of his health, done harm to and damaged him, and rendered him incapable of work. The employee is to-day, and will probably continue to be until he dies, a hopeless cripple,

unable to work because of incapacity due to the effect of the poison taken into his system.

The Board further finds that the employee's incapacity for work resulted from an injury which arose out of and in the course of his employment, the gradual accumulation of the poison in said employee's body subsequent to July 1, 1912, resulting in a personal injury which incapacitated him on March 13, 1913, and that, in so far as the Workmen's Compensation Act is concerned, there is no difference between the incapacity for work caused by lead poisoning and that resulting from a blow which causes equal incapacity for work, provided the personal injury received arises out of and in the course of the employment. The Board finds that there is due the said employee a weekly payment of \$5.50, said weekly payment to continue during the incapacity for work of said employee, from March 27, 1913, the fifteenth day after the injury, to a date in the future not to exceed five hundred weeks from the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 232.

HENRY MCALLISTER, *Employee.*

J. J. WILLIAMS, *Employer.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

**INCAPACITY FOR WORK. PROPER MEDICAL TREATMENT RECOMMENDED. EMPLOYEE ENTITLED TO COMPENSATION DURING INCAPACITY.**

The employee was employed as a teamster and, as he was about to walk off his wagon, the heel of his shoe caught between the tailboard and body of the wagon, throwing him and fracturing his ankle. The medical evidence showed that proper treatment would have advanced recovery, and the committee of arbitration recommended that the employee undergo the treatment recommended.

*Held*, that the employee was entitled to compensation during incapacity.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Henry McAllister v. Frankfort General Insurance Company, this being case No. 232 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, William H. Lewis, for employee, and Horace G. Pender, for insurer, being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, May 29, 1913.

We find that Henry McAllister was employed as a teamster by J. J. Williams of 12½ Mercantile Street, Boston, Mass.; that on Monday, Oct. 28, 1912, at about 1 o'clock, as McAllister went to walk off the wagon, the heel of his shoe caught between the tailboard and body of the wagon, and he fell off and fractured his ankle.

He was treated at the Relief Hospital on March 12 for the fracture of the left ankle. It was a Pott's fracture, so called. According to the medical testimony, had McAllister taken a somewhat different treatment and used his foot more in a proper way he might have been farther advanced than he was towards complete recovery. It was the opinion as expressed in the testimony of Dr. James W. Seever that a few weeks of massaging and baking would completely restore the foot; therefore, we find, McAllister was injured in the course of and arising out of his employment, and that he is entitled to compensation to the date of the hearing, May 29, 1913, and that compensation should be paid him for another month additional, during which time he is to undergo the treatment recommended for the re-establishment of the normal condition of the ankle.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.  
WILLIAM H. LEWIS.



CASE No. 235.

WILLIAM IRVING ANDREWS, *Employee*.

NORTHAMPTON STREET RAILWAY COMPANY, *Employer*.

TRAVELERS INSURANCE COMPANY, *Insurer*.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

EMPLOYEE, RIDING TO WORK IN MAIL CAR, ASSISTING TO UNLOAD THE CAR, ENTITLED TO COMPENSATION FOR INCAPACITY FOR WORK RESULTING FROM A PERSONAL INJURY RECEIVED WHILE SO ENGAGED.

The employee, a motorman in the employ of the Northampton Street Railway Company, was injured while riding to work on a mail car, his day's work beginning at 5.30 A.M. and ending at 4.45 P.M. It was necessary that he assist to unload the mail in order to save time and get him to the car barn prior to the hour at which he was expected to report. This had been his custom for four years prior to the injury, and this fact was known to the officials in charge. His day's pay began at 5.30 A.M. whether his car left the barn or not. The injury occurred at 5.48 as the result of a collision between the mail car and another car.

*Held*, that the employee was entitled to compensation, the injury arising out of and in the course of his employment.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Irving Andrews v. Travelers Insurance Company, this being case No. 235 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman, chairman, representing the Industrial Accident Board, Mr. Roscoe K. Noble, 76 Main Street, Florence, Northampton, Mass., representing the employee, and Mr. Thomas H. Kirkland, 231 Court Square Theatre Building, Springfield, Mass., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Northampton, Mass., on Monday, May 19, 1913, at 11 A.M.

We find in this case upon the entire evidence that the claim-

ant at the time he was injured was acting in the course of his employment, and he is entitled to recover compensation.

The claimant testified that he was employed as a motorman by the Northampton Street Railway Company; that his work consisted of nine hours in twelve, beginning at 5.30 in the morning and ending at 4.45 P.M.; that his day's pay was \$2.60 per day, and his pay was fixed by wage scale; and that any other employee who had been in the service of the company for the same length of time that he had been would receive the same pay which he received.

The evidence showed that he was injured somewhere about 5.48 A.M. while riding on a mail car on his way to the car barns to report for duty. The claimant testified that for four years it had been his custom to ride to the car barns upon this same mail car, and that he usually helped load and unload the mail car in order to facilitate its return to the car barn in such time as to enable him to take his car out on time; that he was furnished, as a part of his contract with the Northampton Street Railway Company, with a pass, which entitled him to ride upon any or all cars of the Northampton Street Railway Company; that the company agreed by the issuance of this pass to transport him to and from his home to his place of work; that it was known to the officers having general superintendence over the claimant; that it was his custom to take this car, and had been for about four years; that on this particular morning the mail car was late, and while on its way back to the car barn there was a head-on collision with another car operated by the same company, in which the claimant was severely injured.

The insurance company disputed liability on the ground that the accident did not arise out of or in the course of his employment.

In *McGuirk v. William B. Shattuck and another*, 160 Mass., page 45, a woman was employed by a person as a laundress, and had been conveyed, either gratuitously or as a part of the contract of employment, from her house to that of her employer in his wagon, which contained two seats, and the horse attached to which was driven by his coachman. On the way to the employer's house the driver drove rapidly, and turned

the corner of two streets so shortly that the wagon slewed around, the forewheels struck something, and the woman was thrown out and injured.

Mr. Justice Allen on page 47, 160 Mass., says the plaintiff must be regarded as having been in the service of the defendants at the time of the accident. Whether the transportation of the plaintiff was entirely gratuitous, as it seems to have been, or whether it was in pursuance of such an understanding between the parties that it may be deemed to have been a part of the contract, in either case, it was incident to the service which the plaintiff was to perform, and closely connected with it.

The accident happened, it would seem, in consequence of the negligence of the driver, who was a fellow servant of the plaintiff. There was no evidence that the defendants were negligent in the employment of this driver, and there is no contention or suggestion by the plaintiff to that effect. The case, therefore, is the ordinary one where an accident has occurred through the negligence of a fellow servant, and no recovery can be had.

In *Doyle v. Fitchburg Railroad Company*, 162 Mass., page 66, it appeared that Doyle worked for the Fitchburg Railroad as a clerk in the freight department; that he lived with his father in Waltham, and usually went each morning and evening to and from Boston on the defendant's trains; that his work for the defendant closed each day at 6 o'clock and began in the morning at 7 o'clock, and that he performed no service for the defendant while riding on its trains or outside the freight house; that after 6 o'clock on Saturday afternoons he had nothing more to do for the defendant until Monday morning, and the time in the interval was his; that there was a well known and uniform custom of the defendant, known to Cornelius J. Doyle, to furnish to its employees who worked at Boston and lived at some other place on the line of the road a ticket without other compensation than that the person receiving the ticket should perform services for the defendant in accordance with the terms of his employment; that the rate of wages paid to the defendant's employees for a certain class of work was the same, whether the employee resided at the place where he worked or at some other place on the line, and was furnished one of the aforesaid tickets.

On Saturday, Sept. 10, 1892, the deceased left his work at the usual hour, intending to return as usual on the following Monday, and went on the defendant's train home to Waltham, arriving there before 7 o'clock. In the evening, after supper, he went to Boston over the defendant's road solely on a business or pleasure trip of his own, in no way connected with the defendant. At a little before quarter-past ten the same evening he entered a car of the defendant which left Boston at that hour, and took a seat, to be carried to Waltham. While so returning from this trip to Boston and riding on said car by virtue of said ticket, which was punched by the conductor, and while in the exercise of due care, another train of the defendant collided with the car in which the deceased was riding and he was killed. The collision was caused by the gross negligence of an engineer in the employ of the defendant.

The defendant asked the judge to rule that upon this evidence the plaintiff could not recover. The judge refused so to rule, and ruled that there was sufficient evidence upon which to base a finding for the plaintiff, and made such finding accordingly; and the defendant alleged exceptions.

Mr. Justice Morton in his opinion stated; "We do not think that at the time of the injury the plaintiff's intestate was 'in the employment' of the defendant within the meaning of the statute. The defendant was not transporting him to or from the place of his daily labor pursuant to the arrangement which existed between them. It had no control or authority over him. He was not traveling on any service for it. His time was his own, and the defendant was not paying him for it, and he could use it as he saw fit, and he was passing over the defendant's road entirely for his own business or pleasure. So long as he was working from day to day for the defendant it might be said, in a popular sense, that he was in its employment."

The court plainly made the distinction between the status of the employee when he was riding to and from his work and when he was merely taking a pleasure trip on his own time, and was not under the direction and control of his employer.

We find that in the case of *Andrews* there is this difference between the case of *Dickinson v. West End Street Railway*,

177 Mass. 365, — that Andrews always rode to his work on this particular car; that he did work in loading and unloading this car for the express purpose of reaching the car barn on time, although this was not a required duty of his, and this fact was known to those who had superintendence over both the car and Andrews; that at the time the accident happened he was in the service of the Northampton Street Railway Company; that he was at that time subject to the direction and control of the defendant company, and, as it appeared in evidence, that his superintendent could have stopped him and have given him orders to proceed in an entirely different direction and to do anything whatsoever that might be required of him; that his hours of service in the employ of the company were from 5.30 A.M. until 4.45 P.M., and that he was at that time proceeding by one of the cars of the defendant company on which he had a right to be, on business of the company and not for his own personal pleasure, in the course of his employment, and that his injuries arose out of and in the course of his employment.

The committee of arbitration finds that the average weekly wages of the employee are \$18.20, and that there is due him from the insurer the sum of \$9.10 a week during his total incapacity from work, beginning March 28, 1913, and continuing until May 19, 1913. The committee further finds that the employee is entitled to weekly payments in accordance with section 10, Part III. of the statute, on account of partial incapacity from May 19, 1913, to an indeterminate date, said payments to terminate when the partial incapacity of the employee ceases.

DUDLEY M. HOLMAN.

ROSCOE K. NOBLE.

*Dissenting Report.*

From the testimony of the witnesses, as I recollect it, I feel constrained to dissent from the report of the other two members of the Board of Arbitration in the above entitled matter for the following reasons: —

Andrews was not, in my opinion, acting within the course of his master's employment at the time the accident occurred.

He was supposed to report for duty at the car barn at 5.30. From the evidence, as I heard it, it was a matter purely within his own discretion and volition as to how he should get there to so place himself under the control of his master, and at any time before reaching the car barns it was still within his discretion and volition, uninfluenced by his employer, to decide to do any other thing than report for duty. From the evidence as we heard it, I should judge that Andrews could have been riding on that car for the purpose of doing business for himself in the city of Northampton as well as for the purpose of reporting to the car barns to serve the Northampton Street Railway Company as motorman.

He was to be at the car barns at 5.30, and the accident occurred at about 5.48. It is reasonable to suppose, therefore, that the car on which he was to have served as motorman had been placed in charge of some other motorman, and it remained for him to report to his superior to see what other line of duty he would pursue on that day, if he was to remain in the employ of the street railway company; or, his foreman might have discharged him for not being there on time, in which event he would not have received the \$2.60 for that day's work, and could not be said to have been in the employ of the street railway company on that particular day.

If he had decided to walk and had met with an accident on the way no one would think of suggesting that he was injured in the course of his master's employment, and I do not see why the fact that he was riding on this particular car by virtue of a pass, a privilege extended to him in common with all employees of the street railway company, should entitle him to any more favorable consideration. He might have used this pass while out of the course of his employment, and, in fact, while pursuing a line of conduct inconsistent with the furtherance of his master's business.

I think this case is clearly distinguished from the case of *McGuirk v. Shattuck et al.*, cited by the other members of the Board. In that case, the laundress was being carried pursuant to a special arrangement, and the moment she stepped into the carriage she evidenced an intention of entering into and becoming a part of an arrangement for the promotion of her master's

business. This, to my mind, is very different from the case of Andrews, who was riding on the street car of a company which holds itself out to carry all who present themselves for conveyance, whether they are to pay a stipulated fare or ride by reason of a pass, which might be held to relieve a passenger of the obligation of paying the regular fare, whether on duty or off duty.

It was argued by the counsel for the plaintiff that the superintendent of the street railway company might have met Andrews at any point on the car line and varied his direction. If that had actually happened, I should have no argument to offer, but the event on which this argument is based never occurred, and we cannot now say what the rights of Andrews would have been if things had been different. It is enough to say that Andrews had not arrived at the appointed time and at the appointed place to put himself under the control of his master, nor was he so convenient to the premises that his master could have assumed control over him. To decide this case on the supposition on which that argument is based would be to establish a precedent which would open the door to any conductor or motorman having the privilege of a pass to foist upon any insurance company, who undertakes to protect the subscriber, the liability for any accident occurring to him on a street car, whether he was using the pass for his own business or pleasure, or whether he was using it in the course of his master's employment. In this respect a condition would be created which would result in a practice unjust to the street railway company employing a large number of men and contrary to good morals. The rule, therefore, that employees going to and returning from work are not covered under the Workmen's Compensation Act is entirely salutary and consistent, and ought not to be departed from.

My opinion is that this case comes well within the spirit and the intendment of *Doyle v. Fitchburg Railway Company*, 166 Mass. 66, and *Dickinson v. West End Street Railway Company*, 177 Mass. 365.

THOMAS H. KIRKLAND.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been duly filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., on Thursday, July 10, 1913, at 12 m., and affirms and adopts the findings of the committee of arbitration, which were based upon the following testimony.

No evidence was introduced at the hearing before the Industrial Accident Board, the case being submitted on the evidence presented before the committee of arbitration.

The defendant was represented by Thomas F. Meagher, Esq., and the plaintiff by William H. Feiker, Esq.

It was agreed that the plaintiff was in the employ of the Northampton Street Railway Company, and that he was injured on the fourteenth day of March, 1913, the only question being whether, under the circumstances related, the injury to the plaintiff arose out of and in the course of his employment.

William I. Andrews, the injured employee, testified as follows, before the committee of arbitration:—

Q. What is your name? A. William Irving Andrews.

Q. And you live here in Northampton? A. Yes.

Q. How long have you lived here? A. Eight years.

Q. What has been your employment in the past? A. Motorman for the railway company all those years.

Q. Whether or not on the eighth day of March you were in the employ of the street railway company—the fourteenth day, rather? A. I was.

Q. Will you please tell the arbitration board just what you did? A. I came out of the house a little after 5 o'clock and took this mail car going to the station, as I do every morning, as I have done for four years, to help them unload the car, and we started for the barn. We got to the Dickinson Hospital and there we met this car.

Q. What happened there? A. There was a collision.

Q. What time was that? A. That was about 5.48.

Q. Has it been your custom in the past four years to help the employees to unload? A. Every morning except Sunday morning I help to unload that car.

Q. Whether or not you have aided the employees of the street railway company at the time the car leaves there, in taking off the mail and putting on the mail? A. I have in the past four years. I have ridden on that car from my home every day except Sunday morning.



- Q. What time does your day begin? A. 5.30.
- Q. Whether or not, after you were injured, did you have a physician attend you? A. I did.
- Q. Who was he? A. Dr. Hayes.
- Q. Mr. Andrews, you were due to take the car as a motorman at 5.30? A. Yes.
- Q. What was your run? A. My run was to make one trip around Northampton.
- Q. What time did you go to dinner? A. At 12.35.
- Q. When did you go on duty again? A. Went on duty again at 2.30 and worked until 4.40.
- Q. Your runs were from 5.30 until 4.40 in the afternoon and you received a day's pay for making those runs? A. Yes.
- Q. Did you receive any pay for helping unload the mail car? A. I received my day's pay.
- Q. Did you understand that you received no pay for helping unload the mail car? A. No.
- Q. Don't you understand that if you lived near the car barn and walked over, you received no pay for helping unload the mail car? A. Don't get your meaning.
- Q. How much did you get a day? A. I got \$2.60 a day. My day's work required me to take the car at 5.30. We are listed at 5.30. My day's pay commenced at 5.30. At 5.30 I was on duty.
- Q. And this accident happened about 5.48? A. Yes.
- Q. You had a pass? A. Haven't got the pass with me.
- Q. Do they have a regular scale of wages? A. There is a sliding scale based on years of service. Men who work the same length of time I work get the same pay.
- Q. Mr. Andrews, you stated, I believe, that you have been helping to unload this mail car for the last four years? A. Yes.
- Q. Got up there on time and helped unload the car? A. Yes.
- Q. You have a pass? A. Yes. My pass will take me over the road at any time.
- Q. The fact that you were helping to unload this car was known to those who were in charge? A. Yes, it was.
- Q. Were you told to do it? A. Was never told to do it. I had to do it to ride up. I had my choice of walking or doing that. In order to ride on that car I had to do something.
- Q. You were traveling on an employee's pass? A. Yes.
- Q. When did your day's work begin? A. At 5.30.
- Q. And you got \$2.60 for making one run? A. I would get my day's pay regardless of the number of trips. I would draw my pay whether the car left the barn or not. If I reported at 5.30 for work, I would get my day's pay.
- Q. How many hours a day do you work? A. We work seven, eight or nine hours. Agreement calls for nine hours.

Q. Who were the other people on that car? A. There were only two men.

Q. Was it necessary for them to have extra help? A. Don't know, I am sure.

Q. What was the nature of the work on that mail car? A. Unloading mail.

Q. Is it heavy work? A. I guess it is. Some of the bundles would need two men.

Q. Did both the motorman and conductor assist? A. Yes.

Q. Mr. Andrews, do you have to punch a clock? A. No.

Q. You had some kind of an agreement? A. Only our agreement with the company. Day started at 5.30 and ended at 4.35.

Q. What was your reason for unloading the car? A. My reason for unloading the car was to save my walking up.

Q. Could you have ridden on the mail car without helping? A. I could if they got me there on time.

Q. Could you get there earlier by helping? A. Yes, I got up there ten minutes earlier.

Q. Did you have authority from the street railway company to ride on this car? A. Had authority to ride on all the cars.

Dr. Hayes testified as follows: —

Q. How long have you been practicing here? A. Been practicing here two years.

Q. Whether or not on the fourteenth day of March you were called to attend Mr. Andrews? A. I was.

Q. What did you find? A. A fracture of two ribs right near where they attach the spinal cord, and he had a bruise on his left arm. He is making pretty good recovery, considering the injury, and eventually will be well.

Q. Can he use his arm all right now? A. I don't think he can use his right arm to brake a car at present. It may be a few months before he is able to do that. On light work he could use it now.

Q. Do you think he could use an air brake now all right? A. Yes.

Ralph Horton testified as follows: —

Q. You are in the employ of the Northampton Street Railway Company? A. Yes.

Q. How long have you been in their employ? A. Six years.

Q. Whether or not you know the petitioner in this case? A. I do.

Q. Were you with him on the fourteenth day of March, 1913? A. Yes.

Q. Tell the Board just what happened. A. On our way to the barn that morning Mr. Andrews got hurt. I should say it was about 5.40, 5.45 or somewhere about that.

Q. Whether or not before you left Northampton did Mr. Andrews help you unload the mail? A. Yes.

Q. It was his custom? A. Yes.

Q. He rides with you every morning? A. He rides with me on that car to the barn after helping me.

Q. The car was a little late that morning? A. Yes.

Q. How late? A. It was fully ten minutes late.

Q. What time are you due at the barn? A. At 5.30.

The insurer, by its attorneys, Brooks & Hamilton, made the following requests for rulings: —

1. Upon the entire evidence the claimant, Irving W. Andrews, is not entitled to recover compensation under the Workmen's Compensation Act.

2. Upon the entire evidence the injury for which the claimant, Irving W. Andrews, seeks compensation was not a personal injury arising out of and in the course of his employment by the Northampton Street Railway Company.

3. Upon the entire evidence the claimant, Irving W. Andrews, was not, at the time he sustained the injuries for which he seeks compensation, an employee of the Northampton Street Railway Company.

The Industrial Accident Board refuses the requests.

On the evidence introduced before the committee of arbitration and the agreement of the parties, we rule that the injury arose out of and in the course of his employment, and find that at the time of his injury he was in the employ of the Northampton Street Railway Company, and is entitled to compensation under the Workmen's Compensation Act.

In *Dickinson v. West End Street Railway Company*, 177 Mass. 365, the plaintiff was free to ride or not on the car of the railway company; his time was his own, and he was free to do whatever he wished during that time. In the present case Andrews was in the employ of the Northampton Street Railway Company; his time began at 5.30 in the morning, and the injury occurred some time after that, — at about 5.48 in the morning.

In *Gooch v. Citizens Street Railway*, 202 Mass. 254, injured employee, who was killed, at the time he was injured was a passenger and not a servant of the defendant. In the present case Andrews was under pay; he was riding not in a public

conveyance adapted for all passengers alike, but in a mail car where the work he did, assisting to unload the car, entitled him to ride to the barn where he was to start out on his first trip. (See *McGuirk v. Shattuck*, 160 Mass. 45, and *Barstow, adm., v. Old Colony Railroad Company*, 143 Mass. 535, 536.)

We therefore approve the findings of the committee of arbitration, in so far as they allow the employee compensation at the rate of \$9.10 a week from March 28, 1913, until May 19, 1913, and further find that he is entitled to compensation at the rate of \$9.10 a week for the further period from May 19, 1913, to May 30, 1913, inclusive, amounting in all to nine and one-seventh weeks, or a total of \$83.20.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 236.

GEORGE LAWRENCE, *Employee*.  
AMHERST GAS COMPANY, *Employer*.  
NEW ENGLAND CASUALTY COMPANY, *Insurer*.

INCAPACITY FOR WORK. EMPLOYEE TOTALLY INCAPACITATED  
FOR A PERIOD. AFTERWARDS PARTIALLY INCAPACITATED.  
COMPENSATION AWARDED.

The employee was injured by reason of the breaking of a pole upon which he was working as a lineman, being totally incapacitated for a certain period of time, afterwards being partially incapacitated.

*Held*, that he was entitled to compensation on account of total and partial incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George Lawrence *v.* New England Casualty Company, this being case No. 236 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Henry C. Nash, representing the employee, and Benjamin A. Lockhart, Esq., representing the insurer, after being duly sworn, heard the parties and their witnesses at Amherst, Friday, June 6, 1913, at 10 A.M.

The committee finds that said employee on Nov. 4, 1912, received an injury arising out of and in the course of his employment with said employer.

The injury was caused by a pole on which he was working as lineman breaking at the base and throwing him a distance of about 35 feet across the adjoining road, fracturing portions of the right foot and straining some of its ligaments. He was wholly incapacitated for work thereby up to March 3, 1913, excepting two days in January, when he tried to work with his said employer. From said March 3 he was partially incapacitated for his regular work, and still remains so, but has earned some money at intervals since then.

He is now employed by the town of Amherst in the work of its forestry department, receiving the same wages he did at the time of his injury from his former employer, the gas company, viz., \$13.50 per week.

The committee finds that all incapacity for work will cease on July 14, 1913; that his average weekly wages at the time of injury were \$13.50; and that there is now due him in final settlement for compensation, subject to his legal right to review or revision, the sum of \$40.23. This sum is the balance now due and payable to him after a full accounting having been taken between him and the insurer, and the insurer having received all proper credits for compensation previously paid, and due allowance made for amounts earned by him and his reduced capacity since the injury.

DAVID T. DICKINSON.  
BENJAMIN A. LOCKHART.  
HENRY C. NASH.

CASE No. 239.

GEORGE E. SHEEHAN (DECEASED), *Employee.*

SPRINGFIELD FIVE CENTS SAVINGS BANK, *Employer.*

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

**FATAL INJURY TO EMPLOYEE. YOUNGER BROTHER FILES CLAIM AS A PARTIAL DEPENDENT. COMMITTEE FINDS THAT THERE IS NO EVIDENCE OF DEPENDENCY.**

The employee was fatally injured while engaged in the performance of his duty as an elevator employee, and a brother, aged sixteen, filed a claim for compensation, alleging dependency upon his earnings for support. The evidence failed to indicate that he was a dependent.

*Held*, that the claimant was not a dependent and that the insurer should pay the reasonable expenses of the burial, not to exceed \$200.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George E. Sheehan (deceased) *v.* Fidelity and Casualty Company of New York, this being case No. 239 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Edgar A. Hall, representing the employee, and Wendell G. Brownson, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Springfield, Mass., on Friday, May 16, 1913, at 10 A.M. James H. Mulcaire, Esq., appeared for the employee, and Edward Hutchins, Esq., appeared for the insurer.

It was agreed that Geo. E. Sheehan, employed by the Five Cents Savings Bank in Springfield as an elevator operator, was instantly killed on the 25th of January, 1913, and that his average earnings were \$6 a week. The only question in the case was the question of the dependency of a brother, Bert E. Sheehan, sixteen years of age, upon the earnings of Geo. E. Sheehan for his support.

It was agreed that no legal guardian had been appointed for Bert E. Sheehan, and there was no nomination of the next friend, but it was stated by counsel for the employee that if

the arbitrators found for his client Bert, a guardian would be appointed.

John F. Sheehan, father of the deceased, made the following statements: —

My son was killed Jan. 25, 1913, while in the employ of the Springfield Five Cents Savings Bank. At the time of his death I was living with my married son at 716 Union Street, and George was living with his uncle on Williams Street, and had been stopping there for about two weeks. From the time he came from New York until he went to live with his uncle we had been living together at my son's house.

George went to New York in October or November of 1912, and lived there until five or six weeks before he was killed. While there he was employed by Wallace's department store, 122d Street, and earned \$6 a week. He lived with his aunt there who did not ask much board, so he sent \$2 two or three weeks running to me to help support Bertie and myself. I wrote and told him not to send any more because I was working, and to use the money to buy clothes for himself.

Before we came to Springfield my sons George and Bert and myself lived for seven years in New York. For four years we kept light house-keeping, and the rest of the time lived with my married son. George worked in New York for a couple of years at Shoolack's garage as a trimmer, his wages being \$6. I did not work steadily there, but George worked every day, and turned his money over to me every week. Bertie never worked there, but went to school. I had a family of five boys. Three of them are married, one living in New York and the other two in Springfield, and George and Bertie were the only ones left with me. When my sons and myself came to Springfield in June, 1912, we went directly to my oldest son's house on Union Street. While there, George worked at Milton Bradley's and earned about \$7 a week, and I worked for DeRosa at painting, earning \$3 a day, but my work was very unsteady. Whenever I worked I used my money to support the boys. George could not get along with his brother, so for that reason went to New York. While George was in New York, Bertie went to live with his aunt, and I was living elsewhere. About the time Bertie went to his aunt's, he went to work at Miner's cigar store, and earned \$3 a week. He is now earning \$3.50. He turned over the \$3 to me and I would take it to his aunt's for his board. After a while he used to bring the money to me and I would tell him to give it to his aunt, and I would give him some spending money. There were a few weeks that I did not send his board to his aunt which I still owe.

When George returned the last time from New York, he went to live with his brother, and stayed there until he got work. After he got his position he went to live with his aunt. He did some odd jobs before he got a permanent position, but got very little recompense. Finally he was employed by the Springfield Five Cents Savings Bank as elevator

operator, and earned \$6 a week. He drew \$5 of his pay which he used to pay his first week's board at his aunt's, and brought down some of it to me, which I told him to give to Bertie for shoes. The next week he was killed.

Bert Sheehan stated as follows:—

My father and brother George and myself lived in New York City about seven years. My brother George worked about three years of that time and turned over his wages to my father every week, and my father gave him back what he could. While we were there we kept light house-keeping for part of the time at 127th Street. We lived in one room and made our own meals. I came to Springfield with my father and brother George in June, 1912, and went to work at Miner's cigar store about December, my wages there being \$3 a week. We went to live with my married brother when we got here. George got work at Milton Bradley's and turned over all his money to my father.

My brother worked at Fisher's drug store while in New York. We both lived with my father until he took sick and went to the hospital; then we went to live with my married brother. During the time my father was sick, George did not give him any money, but used it to pay his own and my board.

When we came to Springfield, I went to work at Miner's cigar store and gave the \$3 I earned to my father every week, and he gave me back spending money. I was working about a week at Miner's store when I left my brother's house and went to live with my aunt. The money that I took over to my father was used to pay my board to my aunt. Sometimes he would take it over himself and sometimes would tell me to give it to her. Once in a while my aunt would give me a few pennies for spending money, and George would give me 50 cents occasionally. My brother got work in the Springfield Five Cents Savings Bank, and while he was there he gave me 50 cents and a matter of 15 cents during the week. He was only working at the Five Cents Savings Bank a week when he was killed.

Mrs. Lucy E. Lancto, living at 168 Palmer Avenue, stated as follows:—

I lived at 125 Union Street when my nephew, George Sheehan, was killed. He came to live with me after Christmas, and stayed quite a while. Bertie came to live with me in October and has been there since. I received \$3 for Bertie's board while he was staying with me, but gave him back a few pennies to spend quite often. I never received any other money from his father besides this \$3. George was living at my house when he was killed. I do not know how much George made while in New York, but he told me he worked at Wallace's department store.



When he came back from New York he did some odd jobs, such as working nights in a bowling alley, but did not get much money for this. Finally he got work in the Springfield Five Cents Savings Bank, but I didn't get anything from him the first week as he didn't have it. As far as I know, his father was a steady man and worked when he had work. George has told me that his father took liquor, but I never knew him to lose his work through it.

This was all the material evidence introduced in the case. There were no other witnesses.

Upon the evidence the arbitrators find that there was no dependency upon the part of Bert Sheehan, and that he was not a dependent within the meaning of the Workmen's Compensation Act, and therefore find under section 8, Part II. of the act, that the insurer should pay the reasonable expenses of the burial of Sheehan, not to exceed \$200.

JAMES B. CARROLL.

EDWARD A. HALL.

WENDELL G. BROWNSON.

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CASE No. 241.

LAWRENCE IRIS, *Employee*.

EVERETT MILLS, *Employer*.

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer*.

EYE INJURY. REDUCTION OF VISION NOT DUE TO INJURY ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT. EMPLOYEE DID NOT HAVE A NORMAL EYE. CATARACT DEVELOPS WHEN YOUNG. MEDICAL EVIDENCE LEADS TO REVERSAL OF FINDINGS OF COMMITTEE OF ARBITRATION. IMPARTIAL PHYSICIAN FILES REPORT.

The employee, while engaged in the performance of his work, in the boiler room of a factory, and while suddenly rising from a stooping position, struck his right eye against an iron door of the boiler. He continued at work for a time, suffering pain from the injury meanwhile. Finally the pain became so intense he stopped and obtained medical attention. The attending physician reported that the employee was suffering from a traumatic cataract, caused by the injury. The sight of this eye was reduced thereby to below 10 per cent. of normal vision with glasses.

*Held*, that the employee was entitled to compensation on account of incapacity for work and additional compensation for the reduction to below 10 per cent. of normal vision with glasses.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board, revising the findings of the committee of arbitration, in accordance with newly introduced medical evidence and the report of an impartial specialist, finds that the blindness in the right eye of the employee was not due to an injury arising out of the employment, and awards compensation on account of incapacity for work only.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Lawrence Iris v. Massachusetts Employees Insurance Association, this being case No. 241 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Daniel A. Arundel, representing the employee, and John P. Mulholland, representing the insurer, thereby filling the vacancy caused by the absence of R. H. Sugatt, after being duly sworn, heard the parties and their witnesses at Lawrence, Wednesday, June 4, 1913, at 10.30 A.M.

The committee finds that said employee, Lawrence Iris, on March 6, 1913, received an injury arising out of and in the course of his employment with the said Everett Mills. He was working at the time in the boiler room, and while suddenly rising from a stooping position struck his right eye against an iron door of the boiler. He continued at his work until March 8, suffering pain from the injury, when his eye hurt him so much that he was obliged to stop and obtain medical attention.

According to the testimony of the physician, an eye specialist who treated him and observed his condition at about this time, for several weeks the injured man was suffering from a severe condition of iritis, that is, inflammation of the iris. It was also observed by this physician that a cataract had formed and continued to develop in such a manner that he formed the opinion that it was due to an injury sustained sometime recently.

The employee also complained at this time of having received the injury to his right eye. He also testified that he had never had any trouble before with the eye during the eight years previous to receiving the injury that he had worked for his

said employer. Nor was any evidence presented that the employee ever had suffered any injury or pain before this time to his right eye, or had been unable to use it.

The examination and observations of the attending physician as aforesaid were made in the months of March and April, 1913, beginning about ten days after the injury; and in the opinion of this physician the employee was suffering from a traumatic cataract caused by this injury. The sight of this eye was reduced thereby to below 10 per cent. of normal vision with glasses.

There was conflicting medical opinion to account for the cataract in this eye, and the physician appointed by this Board, who examined the employee in May, 1913, was of the opinion that it was an old cataract of about five years' standing, in no way connected with the aforesaid accident. A similar opinion was given by another physician. The physician appointed by the Board, however, stated that the opinion of a physician as to the cause of this cataract, who made his examinations and observations early after the accident, as was done by the first attending physician, would be the more reliable.

On all the evidence the committee finds that the cataract was caused by the injury sustained by striking the door in the course of his employment, and that it has reduced his vision in said eye as above stated; and that if any degree of cataract existed in this eye before the injury it did not interfere materially with the vision of the employee, and was later so aggravated and increased by the injury as to result in this present loss of vision in his right eye; that the employee has been wholly incapacitated for work thereby from March 8, and still continues to be, by reason of his loss of vision; that his average weekly wages at the time of the injury were \$12.60, and that he is entitled to compensation from said insurer as follows: to a weekly compensation of \$6.30 from March 21 during his said total incapacity for work, and to an additional weekly compensation of \$6.30 for a period of fifty weeks from March 6, the date of the injury.

DAVID T. DICKINSON.  
DANIEL A. ARUNDEL.  
JOHN P. MULHOLLAND.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room, Pemberton Building, Boston, Mass., on Wednesday, June 25, 1913, at 10 A.M., and revising the findings of the committee of arbitration, finds as follows:—

It appears from the evidence of the two specialists in eye diseases, Dr. Frank A. Conlon and Dr. Joseph A. Dorgan, that the total blindness in Iris' right eye was not caused by the injury. Iris did not have a normal eye, a cataract developing when he was quite young, and as he could not read, and therefore never used the eye to any great extent, in the opinion of these doctors he had been blind in that eye for a long time and was probably unaware of the fact. The injury to the eye on March 4 or March 6 resulted in an iritis, which brought about disability, but did not bring about the total loss of vision which had existed previously.

Dr. John Morgan, Huntington Avenue, Boston, selected by the Industrial Accident Board as an impartial expert eye physician, reported that in his opinion it was impossible to determine the cause or length of time that the right eye of Lawrence Iris was blind. Inflammation of the eye had caused it to become adherent to the lens capsule, which is opaque, thus preventing inspection of the eye behind. Under the conditions, Dr. Morgan concluded in his report, that "it is probably safe to be doubtful about the injury that he claims to have received on March 6 as being the cause of his blindness."

The Industrial Accident Board finds that the blindness in the right eye of Lawrence Iris was not due to an injury arising out of the employment, and that as a result he is not entitled to the payment of the additional compensation provided in paragraph (b), section 11, Part II. of the act.

The Board finds that as a result of the injury to his eye, and the iritis resulting therefrom, he was incapacitated for labor for a total period of sixteen weeks. He is entitled to disability compensation from the fifteenth day after the injury until June

27, 1913, or a total disability compensation of fourteen weeks, at one-half his average weekly wage of \$12.60, or \$6.30 per week, a total of \$88.20.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 242.

ARTHUR F. CROUCH, *Employee.*

THOMAS G. PLANT COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

INJURY OCCURRING DURING LUNCH HOUR. EMPLOYEE  
FALLS IN GETTING DOWN FROM STOOL. ENTITLED TO  
COMPENSATION.

This employee was in charge of a team of four men whose united work completed the lasting of a shoe. These employees begin work without regard to the regular opening time of the factory; eat their lunch when most convenient, and eat it in the factory. He had finished his lunch and fell, while in the act of getting down from the stool upon which he was seated.

*Held*, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Arthur F. Crouch v. Massachusetts Employees Insurance Association, this being case No. 242 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney of the Industrial Accident Board, chairman, Charles F. Whiting, representing the insurer, and James T. Moriarty, representing the employee, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Thursday, June 26, 1913, at 10 A.M.

Arthur F. Crouch was, on March 7, 1913, employed by the Thomas G. Plant Company of Jamaica Plain, Mass., his average weekly wages being \$16.50. On this day, after eating his lunch sitting on a high stool at his workbench, while getting down from the stool Crouch caught his foot in some way and was thrown to the floor, sustaining injuries to his back and groin which disabled him for labor for two weeks and four days.

There was no dispute as to the facts. The injured employee was a "puller over," one of a team of four men which consisted of a counter boy who assembled the shoe, the "puller over," — in this case, Crouch, — a "side laster" and a "toe laster," the united work of the team of four men being the complete lasting operation of shoes. All of the team are pieceworkers, and are not restricted or limited by the hours set for time-workers. The counter boy begins work first and gets through work first, the "puller over," "side laster" and "toe laster" taking up the operations in turn. The "puller over" — in this case the injured employee, Crouch — is responsible for the work being put through in proper shape, so that each man of the team will be kept employed. On the morning of March 7, about 11.30, the counter boy finished his morning's work, and ten minutes or so later the "puller over," Crouch, completed the work assembled for him. He then procured a pass to leave the factory, went across the street, purchased his lunch, and, returning to his bench, ate it while sitting on a stool purchased from the Plant company and used for this purpose, and occasionally, when convenient, to sit on during his employment. In the act of getting down from the stool the injury was sustained. The testimony further showed that it was Crouch's intention, following the usual custom, which was approved by his employer, after eating his lunch, immediately to begin work tempering uppers and otherwise getting things ready for the afternoon work of the team.

The insurance company contests payment of the medical bills and disability resulting from the injury on the ground that it did not arise out of and in the course of the employment, as provided in section 1, Part II. of the Workmen's Compensation Act.

The committee of arbitration finds that the injury to Arthur

F. Crouch arose from a risk incidental to the work which it was his duty to perform; that this injury was sustained at a time when the relation of master and servant existed between Crouch and his employer, and consequently arose out of and in the course of his employment, as contemplated in the Workmen's Compensation Act. The committee further finds that the injured employee, Crouch, was disabled for a period of two weeks and four days, and is entitled to reasonable medical services during the first two weeks following the injury, and to four days' disability compensation at one-half his average weekly wages of \$16.50, or \$4.72, this being payment in full for all disability to date on account of the injury on March 7, 1913.

EDW. F. MCSWEENEY.

JAMES T. MORIARTY.

*Dissenting Opinion.*

In view of the fact that the injury to Mr. Crouch arose from a fall incurred not during employment but while he was eating lunch or on the point of removing from his bench the remnants of his lunch, I beg to dissent from the above finding and to affirm that Crouch is not entitled to compensation under the Workmen's Compensation Act.

CHARLES F. WHITING.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties in the Hearing Room, Pemberton Building, Boston, Mass., on Friday, Aug. 1, 1913, at 10.30 A.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds that at the time of the injury to Arthur F. Crouch, the employee, he was a pieceworker in the employ of the Thomas G. Plant Company, and in charge of a team of four men whose united work completed the lasting of a shoe. Pieceworkers at this factory begin work without regard to the regular opening time, the said employee getting there early in order to have everything in readiness for the members

of his team, so that there would be no delay in beginning the work of the day. The regular hours of employment are from 7.30 o'clock to 12 o'clock in the morning, and from 1 o'clock to 5.30 o'clock in the afternoon, with an extension to 6 o'clock if overtime work is required. Pieceworkers can come at 7 o'clock or shortly before that hour. There was no general lunch hour in the lasting department, and the said employee was accustomed to work all the time he was in the factory, with the exception of the time taken for luncheon.

On the day of the injury, at about 11.40 A.M., the said employee completed his work for the morning, and procuring a pass went across the street, purchased his lunch and returned to the factory to eat it. Having finished his luncheon, and while in the act of getting down from the stool upon which he was seated, he fell and sustained an injury which incapacitated him for a period of two weeks and four days. It was also in evidence that it was the said employee's intention, following his usual custom, which had the approval of the employer, to begin work tempering uppers and otherwise getting things ready for the afternoon work of his team immediately after he had consumed his lunch.

The Board further finds, following the English case of *Blovelt v. Sawyer*, 6 M.-S. 16, C. A., in which the facts are almost parallel to those in evidence in this case, that the injury to the said employee, Arthur F. Crouch, arose out of and in the course of his employment. Upon the facts, the said employee must be considered as having been in the employment of the Thomas G. Plant Company during the entire working day, from the time he reported in the morning until he left at night, and during the time needed for luncheon as much as at any other time during the course of the day. In the English case above cited the employee was paid by the hour, and the time allowed for luncheon was excluded, yet the court found for him. In this case Crouch was paid by the piece and suspended work in order to partake of luncheon. It was necessary to suspend work for the purpose of eating lunch and it was in the interest of the employer that the time necessary for this purpose be allowed. Crouch was also allowed, as a part of the terms of the employment, to remain in the factory and eat his luncheon there.



Collins, M.R., in the Blovelt case, says: "We cannot say that it is an inference of law that, because he was eating his dinner and was not paid wages in respect of the dinner hour, he ceased to be in the respondent's employ. I think that the accident here arose out of and in the course of the employment, and that the appeal must be allowed and the case remitted to the county court."

In the English case of *Sharp v. Johnson & Company, Limited*, 7 M.-S. 28, C. A., in which the evidence showed that the employee had arrived on the premises twenty minutes before the time for beginning work and received an injury, it was held that it arose out of and in the course of his employment.

The Board further finds that the said employee, Arthur F. Crouch, is entitled to the payment of a bill of \$9 on account of medical services rendered during the first two weeks after the injury, and to four days' compensation on account of total incapacity for work at one-half his average weekly wages of \$16.50, that is, \$4.72, making a total of \$13.72 due in all in accordance with the provisions of the act.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 244.

GEORGE HERRICK, *Employee*.

MILLET, WOODBURY & Co., *Employer*.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD., *Insurer*.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

STRANGULATED HERNIA, FOLLOWING PERSONAL INJURY,  
CAUSES DEATH. QUESTION OF DEPENDENCY OF DAUGHTER WHO KEPT HOUSE RAISED. CLAIMANT FOUND TO BE WHOLLY DEPENDENT. COMPENSATION AWARDED.

There were two issues involved in this case: whether the personal injury received caused the strangulated hernia, which resulted in death, and whether the claimant, a daughter, who lived with her father and kept house for him, was wholly

dependent upon him for support at the time of his injury. The employee tripped while getting off an elevator and was thrown with some violence against the opposite wall of the hallway. Later, a strangulated hernia developed and death followed. A daughter claimed compensation as a total dependent, and it was in evidence that she was a strong, healthy woman, earning, prior to her mother's death, \$9 a week in a factory. When her mother died she relinquished her position and remained at home to take care of her father. There was no agreement as to remuneration. He was her father, and because he needed her she voluntarily gave up her work and kept house for him. She was, at the time of the hearing, able to earn good wages as a housekeeper. She considered herself wholly dependent upon him for support at the time of the injury. To the question, "Every cent you got for support and every bit of support you got came from your father?" she answered, "Yes."

*Held*, that the injury which caused death arose out of and in the course of the employment, and that the claimant was wholly dependent upon the deceased at the time of the injury.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George Herrick *v.* Employers' Liability Assurance Corporation, Ltd., this being case No. 244 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Arthur A. Forness, representing the employee, and M. L. Sullivan, representing the insurer, after being duly sworn, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Beverly, Monday, May 26, 1913, at 10.30 A.M.

We find that George Herrick of 49 Hale Street, Beverly, was employed by Messrs. Millet, Woodbury & Co., of Beverly, who were insured by the Employers' Liability Assurance Corporation, Ltd.; that by an agreement his average weekly wage was \$3; that Miss Caroline E. Herrick, daughter, claimed full dependency under the act.

It appears in evidence that George Herrick was a man over eighty years of age, and that he had permission from his employers, on account of his advanced age, to ride up and down on the freight elevator of the concern when it was in charge of one of the foremen; and at each time that he used the elevator

he asked permission so to do, which was regularly granted to him.

It appears in evidence that the elevator was never in charge of any regular elevator man, but that those who used it were generally foremen, and that the elevator was a slow-moving lift rising not more than 40 feet a minute; that it was the habit of employees to get on and off the elevator while it was yet in motion; that employees were forbidden to ride upon this elevator; that, nevertheless, employees did ride upon this elevator, even in the absence of specific permission to do so; that Herrick, however, always asked and received permission; that on Dec. 18, 1912, at about 1 o'clock, Mr. Herrick when getting off the elevator tripped and fell because the elevator was not on a level with the floor at which he was supposed to get off, and was thrown to his knees receiving a bad shaking up; that upon Jan. 25, 1913, between 7.15 and 8 o'clock A.M., Mr. Herrick, in stepping off the elevator while it was in motion and when it was a little above the floor on which he wished to get off, was thrown with some violence against the opposite wall of the hallway, but was not thrown down; that Mr. Herrick was a very heavy man and well along in years.

According to the testimony of Dr. Frank A. Cowles of 276 Cabot Street, Beverly, a well known and reputable physician who has been practicing for twenty-three years and who had been Mr. Herrick's physician for five years, he was called to attend Mr. Herrick on both these occasions; that on January 26 he called upon Mr. Herrick and attended him for five days. In January Mr. Herrick had an attack of indigestion. His last sickness was from February 14 to March 7, during which time Dr. Cowles made twenty-two visits, sometimes calling once a day and sometimes twice.

Mr. Herrick complained of pains in the pit of his stomach and on the right side of his abdomen, especially a great deal of pain in his knees and legs, and the last two weeks, pain in his neck. He was unable to lie down at all and generally sat up in a chair. He also had rheumatism in the knees and legs. On March 5 the doctor for the first time discovered a lump on the right side of Mr. Herrick. He inquired if he had ever had one there before, and Mr. Herrick replied, no, but when he was

coughing, especially in the night, a great bunch swelled up. Dr. Cowles examined him and found a rupture about as big as a small hen's egg. That same afternoon he found the rupture still there. He tried to get it back in the abdominal cavity again, but failed. He vomited great quantities of stuff. Dr. Cowles told him that he had a rupture and that it was strangulated; that the rupture had got to be removed, or he would die. He suggested that another physician come in and see it, and Dr. Sears of Beverly was called in that afternoon. He tried to reduce the rupture, but failed. Dr. Sears said the only thing he could suggest was to operate upon him and reduce the rupture, so arrangements were made to operate about 7 o'clock that evening. It was decided by the physicians that it would be impossible to give him ether on account of his condition, and they were going to inject cocain.

Dr. Cowles called at 6 o'clock and found him in such a weak condition that he injected one-fiftieth of a grain of strychnin. He returned about 7 o'clock and found Mr. Herrick in a complete collapse; he was dying and didn't know any one. Dr. Sears came in at the time appointed and said it was useless to operate as the man was dying. Mr. Herrick remained in the same stupor, reviving only a little. He became unconscious and died the next morning.

Dr. Cowles testified in response to questions that the falling out of an elevator on January 25, owing to his weight and age, would have been a good cause for this hernia, and following that cause, hernia would naturally show up within a day or two. A rupture is a protrusion of the bowel through an opening. Sometimes it comes slowly and sometimes like a gush. A strangulated hernia is a form of rupture where you cannot return it to its proper place. Dr. Cowles stated it was his opinion that this fall of January 25 brought on the rupture.

In response to a question by Mr. Sullivan, arbitrator for the insurance company, whether Dr. Cowles, stating that a man eighty-three years of age, having been treated for acute indigestion, would say as a fact that it was so caused by the strangulated hernia, the doctor replied, yes. The doctor stated that men have ruptures for years and never have any pain, yet the lump might be there. He only discovered this rupture by

manipulation because of the great size of the abdomen of Mr. Herrick, and by the fact that until Mr. Herrick called his attention to a swelling there, he had not thought of a rupture in connection with the trouble.

According to the testimony of Dr. Harrison G. Blake, it was stated that the hernia might have been caused by the accident on the twenty-fifth day of January. It might have been caused by any fall. That is the usual way for a rupture to be caused, by a fall. Ruptures may also be caused by a strain or by occupation, that is, by heavy labor. Dr. Blake in defining strangulated hernia stated that it is when the bowel goes down through the ring or inguinal canal, and usually gets through the outer ring, so that if the circulation of the bowel beyond the external ring, or that portion of the bowel protruding over the external ring, is stopped you get gangrene.

Dr. Blake was asked what was required to cause strangulation. He said contraction around the vessels of the bowel. A man may go along years with a hernia which isn't strangulated, and then have a severe fit of coughing and it will drive in a little further so that the pressure is sufficient to stop the circulation. When asked if it was necessary to have any great amount of force or strain to wedge it in there, Dr. Blake stated that just simply the strain or walking might produce that wedging there after the rupture had once been formed. He said it was necessary to have force applied to cause strangulation, that is, some slight force.

Dr. Blake in answer to questions stated that the pressure of the bowel itself might produce this force. Dr. Blake in answer to inquiries by Mr. Sullivan, if he would expect a person receiving hernia from violence caused by a fall to know it at once, replied, that he would expect a man to have some symptoms of it. He would become more conscious of it as he went to do his work; any standing would naturally increase what he had. Dr. Blake, when asked what symptoms he would expect to find if he called on a man who had received a fall such as might have caused hernia or what condition to show that he had the hernia, stated he would expect some pain, not a sharp pain, an uneasy feeling in the groin, and there might possibly be some swelling there. Examination would find out everything.

Mr. Sullivan asked Dr. Blake if he could conceive of a rupture being caused by a fall having been received on the twenty-fifth day of January, and pain coming after the fourteenth day of February for the first time. Dr. Blake stated that he should have thought the man would have had some symptoms of it. Some people notice pain sooner than others and pay more attention to it. Mr. Sullivan asked Dr. Blake the question: If Mr. Herrick had a fall about December 18, from an elevator, landing upon his feet and knees, and on January 25 had a fall from an elevator, striking against some object; and on January 26 was treated for acute indigestion and remained at home a week or ten days, and then returned to his employment and worked two weeks or more, calling a physician on February 14 who afterwards found hernia on March 3 or 4, — whether such a hernia could have been caused by a fall occurring on December 18? Dr. Blake stated that it might have been caused by an accident on January 25.

It appeared in evidence that Miss Caroline E. Herrick was the daughter of George Herrick; that she was wholly dependent upon him for her support. Therefore, we find that according to the medical testimony the fall from the elevator on January 25 produced a hernia which resulted in death on March 7 by strangulation; that the accident was received in the course and arising out of his employment; that his average weekly wage was \$3; and that Caroline E. Herrick is entitled to recover compensation at the minimum rate of \$4 per week, provided by law, for a period of three hundred weeks.

DUDLEY M. HOLMAN.

ARTHUR A. FORNESS.

*Dissenting Opinion.*

I am unable to agree with the majority of the committee that the testimony as to the accident of January 25 warrants the finding that the accident produced a hernia which resulted in the death of George Herrick on March 7 by strangulation, or that the facts warranted a finding of dependency.

M. L. SULLIVAN.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Wednesday, Sept. 10, 1913, at 2 P.M., and affirms and adopts the findings of the committee of arbitration.

Caroline E. Herrick, a daughter of the deceased, testified before the Industrial Accident Board that she had lived at home with her father, as his housekeeper, since the death of her mother some years before, receiving from him her board and room and other necessities. There was no agreement between them as to remuneration. He was her father, and because he needed her she voluntarily gave up her work in a factory in Salem, where she was earning \$9 a week, and remained at home to take care of him. She was a strong, healthy woman and had no physical or mental ailments, and admitted that she was now able to earn good wages as a housekeeper. She further stated that in addition to his wages her father received \$8 weekly from a married sister and her daughter for board, and \$15 a month as rent for the upper apartment of the house in which they lived. She considered herself wholly dependent upon him for support at the time of the injury and during the years she remained at home keeping house for him. To the question, "Every cent you got for support and every bit of support you got came from your father?" she answered, "Yes."

It was agreed by the parties, correcting the findings of the committee of arbitration, that the average weekly wages of the employee were \$3.67, the said employee being over eighty years of age, and having been employed as a shoe worker for Millett, Woodbury & Co. for the past twenty-five years. His inability to earn a higher average weekly wage was due to his extreme age.

The insurer submitted requests for rulings, which are attached hereto.

Although the fund from which the deceased paid this money to the claimant was mixed, being derived from earnings received from his employer and the board and rental above men-

tioned, the Board finds that he intended to pay over to her his average weekly wages, either in the actual cash received from said wages, or a sum equal thereto, from the common fund.

It appeared that the deceased, during the year preceding the injury and for a considerable time before that, supplied the claimant with the necessary money for her support, which the Board finds, as a fact, was practically an amount per week equal to his average weekly earnings from Millett, Woodbury & Co., said employers.

The Industrial Accident Board finds that the claimant, Caroline E. Herrick, was wholly dependent for her support on these payments and contributions to her from the deceased, and accordingly decides that there is due the said claimant from the insurer, the Employers' Liability Assurance Corporation, Ltd., a weekly compensation of \$4 for a period of three hundred weeks from the date of the injury; that is, a total payment of \$1,200

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

*Insurer's Requests for Rulings.*

1. Upon all the evidence the Board must find that the deceased employee left no person or persons dependent upon his earnings for support, and that the insurer, if liable at all, is liable only for the expenses of the last sickness and funeral expenses.

2. Upon all the evidence the Board must find that Caroline E. Herrick was not dependent upon the earnings of the deceased employee.

3. If the Board finds that Caroline E. Herrick was physically and mentally able to support herself, and to provide the ordinary necessities of life for herself, it must find that she was not dependent upon the injured employee.

4. If the Board finds that Caroline E. Herrick was physically and mentally able to support herself and to provide the ordinary necessities of life for herself, but that she, out of consideration



for her father, lived with him and received the necessities of life from him, it must find that she was not totally dependent upon his earnings for support.

5. If the Board finds that Caroline E. Herrick was not in need of the earnings of the deceased in order to obtain the necessities of life, it must find that she was not dependent upon his earnings for support.

6. If the Board finds that Caroline E. Herrick received from the injured employee the necessities of life in exchange for, or as a consideration for, the services rendered to the injured employee as a housekeeper, it must find that said Caroline E. Herrick was not dependent upon the deceased employee.

7. Upon all the evidence the Board must find that the deceased employee left no person totally dependent upon his earnings for support.

8. Upon all the evidence the Board must find that the earnings of the deceased employee were wholly inadequate to maintain himself and Caroline E. Herrick, and that the earnings of the deceased employee did not, in fact, support himself and Caroline E. Herrick.

9. If the Board finds that the earnings of the deceased employee were wholly inadequate to maintain himself and Caroline E. Herrick, and that they did not, in fact, support himself and Caroline E. Herrick, the Board must find that Caroline E. Herrick was not totally dependent upon the earnings of the deceased employee.

10. Upon all the evidence the Board must find that at the death of the deceased employee, Caroline E. Herrick was physically and mentally able to support herself and to provide for herself the ordinary necessities of life.

11. If the Board finds that Caroline E. Herrick rendered services to the deceased employee which were equal to or exceeded in value the benefit she received from the deceased employee, it must find that said Caroline E. Herrick was not totally dependent upon the earnings of the deceased employee.

12. Upon all the evidence the Board must find that the services rendered by Caroline E. Herrick to the deceased employee were equal to or exceeded in value the benefits received by Caroline E. Herrick from the deceased employee.

13. Upon all the evidence the Board must find that the deceased employee was not under a legal obligation to support and maintain Caroline E. Herrick.

14. If the Board finds that Caroline E. Herrick was dependent upon the deceased employee, it must find that her said dependence upon the earnings of the deceased was but a partial dependency.

15. If the Board finds that the relation of employee and employer existed between Caroline E. Herrick and the deceased employee it must find that Caroline E. Herrick was not a dependent.

16. Upon all the evidence the Board must find that the relation of employee and employer existed between Caroline E. Herrick and the deceased employee, and that there was no relation of dependent and benefactor.

17. Upon all the evidence the Board must find that Caroline E. Herrick was not in need of the earnings of the deceased employee in order to obtain the necessities of life.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
By its Attorneys,  
SAWYER, HARDY & STONE.

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CASE No. 247.

JOE MARINELLI, *Employee.*

FRED T. LEY & Co., INC., *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK DUE TO SEPTIC POISONING. EMPLOYEE RECEIVES SLIGHT SCRATCH WHILE CARRYING BEAM. SEPTIC POISONING FOLLOWED. COMPENSATION AWARDED.

The employee, a laborer, was carrying an iron beam when it slipped from his shoulder, scratching the forearm. The injury was at first looked upon as trivial, and he made no report of it. Later, septic poisoning set in and an operation became necessary.

*Held*, that the employee was entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joe Marinelli v. Contractors Mutual Liability Insurance Company, this being case No. 247 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of James B. Carroll, representing the Industrial Accident Board, chairman, Pasquale A. Breglio, representing the employee, and James Linnehan, representing the insurer, heard the parties and their witnesses at the auditor's room, Court House, Springfield, Mass., on Saturday, May 17, 1913. Norman F. Hesseltine, Esq., appeared for the insurer, and Silvio Martinelli, Esq., appeared for the employee.

Joe Marinelli, employed by the Fred T. Ley & Co., Inc., was injured on the 4th of April, about 5 o'clock in the afternoon, while lifting an iron beam with three other employees; and while he was attempting to raise the beam upon his shoulder, it fell back in such a way that it made a slight scratch upon the forearm. The next morning he reported at the works that he was unable to work, was discharged, and received compensation due him.

On the 11th of April he went to the Springfield Hospital, where it was found that he was suffering from a septic condition of the arm. He remained there until April 18, contracting a bill for hospital services amounting to \$15.50.

On the 22d of April the following notice was given to the Fred T. Ley & Co., Inc., "Please take notice that Joe Marinelli, one of your employees, bearing number 8424, was injured in his left arm on March 4, 1913, about 5 o'clock P.M. The injury was caused by lifting heavy timbers."

The hospital report shows that when he entered the hospital on the 11th of April it was found that he had a septic condition of the left forearm and elbow, that an incision and drainage was performed, and that he is still incapacitated for work and probably will be for two weeks from the present date. The hospital report shows that when he entered the hospital on the 11th of April he stated that twelve days before he noticed a

soreness in the region of the left elbow; that it began swelling and became painful.

There was also testimony from Dr. Furcolo that he attended the employee on the 9th of May, and found him suffering from blood poisoning, and that in his opinion, the condition of blood poisoning existed prior to the fourth day of April, and that the injury which he received on that date had no connection with the condition which he was suffering from, and which he is now suffering from. Dr. John F. Streeter corroborated the testimony of Dr. Furcolo on this point.

After the hearing the following letter was received from Dr. F. L. Hogan, who attended Marinelli following the accident:—

SPRINGFIELD, MASS., May 19, 1913.

JAMES B. CARROLL, Esq.

DEAR SIR:—I was the first physician who saw this man, Joe Marinelli. At that time I found the above party suffering with a contusion of the left elbow joint. There was also a slight abrasion of the forearm, and it was my opinion that the case was not septic at that time.

Yours truly,

F. L. HOGAN, M.D.

Following this letter the Industrial Accident Board started an investigation, and Dr. Kilroy reports substantially as follows:—

Dr. Hogan saw Marinelli on April 8 at the corner of Chestnut Street, on his way from the Carter-Chesboro fire. Dr. Furcolo saw him the next day, the arm rapidly growing worse, and so much worse was it on his entering the hospital that a large amount of pus had dissected the skin from the underlying muscles. The pus was superficial, *i.e.*, it was just below the skin. The history of the hospital was written by a medical student from Tuft's Medical College, who had come up to help out during a period when there was a lack of house doctors, and his records, to a great extent, are fanciful. Dr. Ober, who was the attending physician at the time Marinelli was brought to the hospital, feels sure there was an abrasion, and such an abrasion, infected with a virulent germ, could give very readily soreness the next day, the signs of blood poisoning five days later, and an abundant pus formation in a week. There was no evidence in the case to show any cause of the septic con-

dition, except the injury above stated. The average weekly earnings of the employee were \$12.

We therefore find that on the fourth day of April, while the men were laying concrete floors, toward the end of the day, Marinelli and two others were ordered to carry an iron beam to an upper floor. The beam slipped from Marinelli's shoulder to his bent forearm. He considered the injury insignificant, and we find that the septic condition which involved the operation was the result of the injury which he received on the fourth day of April. We therefore find that the employee is entitled to be reimbursed for the amount expended for hospital services, \$15.50, and to compensation from the fifteenth day after the injury, to wit, April 18 to the 31st of May, at \$6 per week which, added to the hospital bill of \$15.50, amounts in all to \$53.21.

JAMES B. CARROLL.

PASQUALE A. BREGLIO.

JAMES V. LINNEHAN.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties and their evidence at the Court House in Springfield, Mass., on Thursday, June 19, 1913, at 11.30 A.M.

The employee, Joe Marinelli, while in the employ of Fred T. Ley & Co., Inc., and while engaged in lifting a heavy beam, on the fourth day of April, 1913, at Springfield, in our county of Hampden, bruised his arm, and as a result blood poisoning set in. After consulting Dr. F. L. Hogan, he went to the Springfield Hospital, where he remained about a week. His hospital bill was \$15.50. He was also attended by Dr. Furcolo, whose bill was \$4, Dr. Hogan's bill being \$1.

The employee was represented by Silvio Martinelli, Esq., and the Contractors Mutual Liability Insurance Company, the insurer, by Thomas F. Meagher, Esq.

We therefore find that while in the employ of Fred. T. Ley & Co., Inc., he was injured, and we affirm and adopt the findings of the committee of arbitration, and find that he is en-

titled to receive compensation for money expended by him for hospital services amounting to \$15.50; also for \$1 paid to Dr. F. L. Hogan, and \$4 paid to Dr. Charles L. Furcolo, and compensation from April 18, 1913, to May 31, 1913, of \$6 per week, amounting in all to \$58.21.

JAMES B. CARROLL.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 253.

SETH GLOVER, *Employee*.  
W. N. PIKE & SONS, *Employer*.  
STANDARD ACCIDENT INSURANCE COMPANY, *Insurer*.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.  
LACK OF KNOWLEDGE OF INJURY ON THE PART OF THE  
EMPLOYER CAUSES INSURER TO DECLINE TO PAY COMPEN-  
SATION. EVIDENCE SHOWS INJURY ACTUALLY OCCURRED.  
COMPENSATION AWARDED, HERNIA SUBSEQUENTLY DEVEL-  
OPING.

The insurer declined to pay compensation in this case, on the ground that the employee did not receive an injury arising out of and in the course of his employment. The evidence proved that the employee was injured while unloading bricks from a railroad car, the truck getting stuck in the sand over which the bricks were trucked, causing a strain which brought on a hernia.

*Held*, that the employee was entitled to compensation.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Seth Glover *v.* Standard Accident Insurance Company, this being case No. 253 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Daniel J. Donahue of Lowell, Mass., representing the employee, and Charles H. Watkins of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Lowell, Thursday, June 26, 1913, at 11 A.M.

The insurer refused compensation in this case, on the ground

that the injury did not arise out of and in the course of his employment, the employer denying any knowledge of it and no medical certificate or evidence of any kind having been offered to prove that it did so occur.

The evidence offered proved that Seth Glover, the employee, was injured while in the employ of W. N. Pike & Sons, the injury occurring at 10 o'clock, July 29, 1912, while he was unloading bricks from a car at North Billerica. While trucking a load of bricks down a sandy run, the truck stuck in the sand, overturning the load and sending him down the incline, causing a hernia. Martha D. Glover, his mother, and John D. Glover, his brother, corroborated the testimony of the employee, the brother being with him at the time of the injury. Dr. T. G. McGannon, a practitioner of twenty-seven years' standing in Lowell, attended him, and said that it was a new hernia, in his opinion, and that the incapacity resulting from it lasted about twelve weeks. The average weekly wages of the employee were \$11.10.

The insurer agreed upon the evidence offered that the employee was entitled to compensation, stating that it was the lack of any evidence that caused the company to decline payment.

The committee finds that the employee, the said Seth Glover, received a personal injury arising out of and in the course of his employment, and there is due him on account of the total incapacity resulting therefrom a payment of \$5.55 weekly for a period of ten weeks, from Aug. 11, 1912, the fifteenth day after the injury; that is, a total payment of \$55.50.

JOSEPH A. PARKS.

DANIEL J. DONAHUE.

CHARLES HADLEY WATKINS.

CASE No. 261.

PATRICK MCGUIGAN, *Employee*.  
N. M. LINCOLN & SON, *Employer*.  
MARYLAND CASUALTY COMPANY, *Insurer*.

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.  
DEATH, AFTER OPERATION FOLLOWING STRAIN, CAUSED BY  
INTESTINAL OBSTRUCTION AND APPENDICITIS. WIDOW EN-  
TITLED TO COMPENSATION.

The employee, a carpenter, was engaged in laying a floor, and while laying it found it necessary that a radiator weighing 300 pounds be moved. While moving it he sustained a strain, which totally incapacitated him for work. He died, following an operation, and the weight of the medical testimony indicated that death was caused by intestinal obstruction and appendicitis, following the strain.

*Held*, that the injury arose out of and in the course of the employment and that the widow was entitled to compensation.

Review before the Industrial Accident Board.

*Decision*. — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

*Report of Committee of Arbitration.*

The committee of arbitration appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Margaret E., widow of Patrick McGuigan *v.* Maryland Casualty Company, this being case No. 261 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, James H. Kenyon, Jr., of Fall River, representing the widow, and Charles A. Howland, M.D., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Fall River, Mass., Saturday, May 31, 1913, at 10 A.M.

Patrick McGuigan, the deceased employee, was in the employ of N. M. Lincoln & Son of Fall River, and was injured on Wednesday, April 16, 1913, while moving a radiator weighing approximately 300 pounds, said injury arising out of and in the course of his employment. At the time the personal injury was sustained the deceased was engaged in laying a hard-wood floor in the residence of Mrs. Margaret Waring, at 5 Robeson



Street, Fall River. It became necessary to move the radiator, and while moving it he sustained a strain, which totally incapacitated him for work. He died, following an operation on Thursday, April 24, 1913, and the case came before the committee of arbitration upon the question as to the liability of the insurer under the Workmen's Compensation Act.

The widow testified that the deceased complained on Thursday, April 17, 1913, that he was not well, stating that he had moved a radiator at his place of employment, and while doing so he "felt that something had snapped." He returned to work that day, however, expressing the hope that "my work will be easy to-day, for I am not feeling well." He returned home Thursday night and went directly to bed.

Mrs. Margaret Waring, in whose home the deceased was working, testified that he had moved the radiator. He afterwards stated that it was too heavy to be moved by himself alone, later complaining of pains which he attributed to the strain caused by the moving of the radiator. She made hot ginger tea, and when he left her home he was still suffering from the injury.

George Waring, son of Mrs. Margaret Waring, testified that he found the deceased trying to move the radiator, without assistance, in order to go ahead with his work. Witness attempted to help him push the radiator about, but gave it up, recalling his own experience six or seven years previous, when he received a strain as a result of pushing a heavy roller over crushed stone.

Dr. Arthur C. Lewis, a practitioner of many years' experience, and formerly city physician for several years, attended the deceased and stated that he complained of a pain in the right side of the abdomen. The deceased informed him that he had not been free from pain since the day upon which he had received a strain while moving a radiator. The witness was called again the next day and found the pain had become more severe, and at 4 o'clock Saturday afternoon he had the patient removed to St. Ann's Hospital. He recommended an operation, and about 8 o'clock Saturday night he was operated upon by Dr. Truesdale in the left inguinal region. Before he was placed on the operating table, his temperature and pulse

were normal, and everything looked good. After the operation the doctor told the man's wife that he was doing well, and would get better, but he gradually failed until he died on Tuesday. The witness was not positive as to just what he died from, but gave it as his opinion that the injury was the contributing cause of his death.

Dr. Truesdale, who performed the operation on the deceased, testified that he thought the patient was suffering from appendicitis, but stated that it was a very doubtful case, as temperature and pulse were normal. The appendix was removed, and that area was drained, but obstruction of the bowels still continued, and they failed to get any movement of the bowels from the time he entered the hospital; so that, while the direct condition was appendicitis, the other feature was a more serious one. It was agreed in other cases that lifting might bring about the above-named results. He cited the case of Mr. Waring, who had testified that he had received a strain from running a heavy roller over a crushed stone walk, for which he had afterwards been operated upon; also the case of a certain Isaac Tripp who had received a strain from trying to lift a tip cart, the latter having been operated upon later by Dr. Truesdale for appendicitis. From the testimony already presented, and from his own experience in this case, the witness thought that the strain received by the deceased was the contributing cause of his death. He had performed about 800 operations for appendicitis, and would say that many patients gave him a history of some blow received in the region of the appendix, some strain occasioned in different ways, which caused a tenderness or soreness in the abdomen, as being, in their opinion, the cause of the illness.

Dr. John W. Coughlin, a practicing physician for twenty-eight years, and the family physician of Mr. and Mrs. McGuigan for five years, testified that the deceased was an extraordinarily healthy man, muscular and vigorous; that he had been a man of sterling character and habits, and he did nothing so long as the witness knew him that might impair his health in any way. He believed that the previous history in this case was sufficient to determine the remarkably good condition of this man prior to his injury from moving the radiator, and

thought that the whole trouble had been brought on as the result of moving the heavy weight. He recalled the case of a patient employed in a foundry, who had injured himself by lifting a weight, and who had said he knew he had strained himself, and the witness believed he had. The patient died after using all the remedies prescribed in such cases. Witness said that "When a man comes to him and states that he has been injured and complains of severe pain, and tells of having lifted a heavy weight and of the pain which followed such lifting, and is then operated upon, and the cause for that pain is found, there should be no doubt but that the injury was at least a contributing cause."

The committee of arbitration finds, upon the evidence, that Patrick McGuigan, the deceased employee, received a personal injury arising out of and in the course of his employment, by reason of a strain caused by moving a radiator, said injury necessitating an operation which caused the death of the said employee, the strain being the contributing cause of said death. The committee further finds that the average weekly wages of the said Patrick McGuigan were \$21, and that there is due the widow, Mrs. Margaret E. McGuigan, a payment of \$10 a week from the insurer for a period of three hundred weeks from April 16, 1913, the date of the injury.

JOSEPH A. PARKS.

JAMES H. KENYON, Jr.

*Dissenting Opinion.*

As the minority member of the committee of arbitration, appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mrs. McGuigan, widow of Patrick McGuigan, — Maryland Casualty Company, this being case No. 261 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, James H. Kenyon, Jr., of Fall River, representing the widow, and Charles A. Howland, M.D., representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Fall River, Mass., Saturday, May 31, 1913, at 10 A.M.

Patrick McGuigan, deceased employee, was in the employ of N. M. Lincoln & Son of Fall River. It is alleged he was injured on Wednesday, April 16, 1913, while moving a radiator weighing, approximately, 300 pounds, said injury rising out of and in the course of his employment.

It became necessary to move the radiator, and while moving it from its former position to the center of the room it is supposed the deceased overexerted himself, causing a strain which did not totally incapacitate him for work until the Friday following.

He died, following an operation for appendicitis, on Thursday, April 24, 1913, and the case came before the committee of arbitration upon the question as to the liability of the insurer under the Workmen's Compensation Act.

E. C. Reed testified that he was employed by N. M. Lincoln & Son, and assisted Patrick McGuigan in carrying the radiator from the center of the room out into the hall; that at the time Mr. McGuigan did not mention that he was strained or injured, nor that the weight of the radiator was excessive; and that Mr. McGuigan continued his work afterwards without any comment to indicate that he had been injured. This testimony would indicate that whatever the injury was which he had sustained in moving the radiator from the side of the room to the center, it was not of sufficient gravity to prevent him afterwards assisting in carrying the radiator with Mr. E. C. Reed into the hall.

The widow testified that the deceased complained on Thursday, April 17, 1913, that he was not well, stating that he had moved a radiator at his place of employment, and while doing so he felt that something had snapped. He returned to work that day, however, saying, "I hope that my work will be easy to-day, for I am not feeling well." He returned home Thursday night and went directly to bed.

Mrs. Marguerite Waring, in whose home the deceased was working, testified that he had moved the radiator. He afterwards stated that it was too heavy to move by himself alone, and later complained of pains in his abdomen and indigestion which he attributed to the lifting of the radiator. She made hot ginger tea, and when he left her home he was still suffering from abdominal pain.

George Waring, son of Mrs. Marguerite Waring, testified that he found the deceased trying to move the radiator without assistance in order to go ahead with his work. He stated that he did not know for certain that Mr. McGuigan had moved the radiator alone, but also stated that he assisted Mr. McGuigan in moving the radiator.

Dr. R. C. Lewis, a practitioner of many years' experience, and formerly city physician for several years, attended the deceased. He stated that he was called Friday night for the first time to see Mr. McGuigan, and that he found him complaining of a pain in the right side of the abdomen. The deceased informed him that he had not been free from pain since the day he strained himself when moving the radiator. He found the patient at this time with normal pulse and normal temperature. The doctor was called again the next day, and found the patient again with a normal pulse and normal temperature, and the pain had become more severe, and at 4 o'clock Saturday afternoon he had the patient removed to St. Ann's Hospital. He stated that the patient's bowels had been free and moved until he went to the hospital. Dr. Truesdale was called in consultation and gave it as his opinion that it was a case for operation. Before he was placed on the operating table his temperature and pulse were normal; after the operation the outlook for his recovery was good. Dr. Lewis testified that he did not know as to just what caused his death, but that he signed the death certificate, giving as primary cause appendicitis, and that not knowing anything better to put down as a contributory cause he had put down a strain or lifting.

Dr. Truesdale, who performed the operation on the deceased, testified that he thought the patient was suffering from appendicitis. He stated that it was a very doubtful case, as his temperature and pulse were normal. The appendix was removed and the area was drained; the obstruction of the bowels began and they failed to get any movements of the bowels from the time he entered the hospital, so while the direct condition was appendicitis the other feature was a more serious one. It was agreed in other cases that lifting might bring about the above-named results. He cited the case of Mr. Waring who had testified that he had received a strain from

running a heavy roller over a crushed stone walk, and that the next day he was operated on for appendicitis, the assumption being that the strain from running a roller was what caused the disease. Dr. Truesdale also cited the case of a certain Isaac Tripp who had received his strain from lifting a tip cart, and was operated on a few days afterwards for appendicitis, and the assumption was again that the lifting had been the cause of the illness. Dr. Truesdale testified that from the testimony already presented, and from his knowledge of the case, he believed that the lifting by the deceased was a contributing factor in his illness. Dr. Truesdale testified that he did not believe the patient died from appendicitis but from obstruction of the bowels, as the patient did not have a movement of the same after entering the hospital.

Dr. J. W. Coughlin, an old and well known physician, was the family physician for five years for Mr. and Mrs. McGuigan. He testified that the deceased was an extraordinarily strong man, vigorous, and a man of good habits. He gave as his opinion, which was not based on personal knowledge of the case, that the whole trouble had been brought on as a result of moving a heavy weight. The minority member of the committee of arbitration finds that the evidence brought forward establishes the fact that Patrick McGuigan, during the course of his employment, was taken ill. His statement to his wife shows that his personal opinion was that he had received, as a result of his lifting, some injury. Furthermore, evidence shows that following the date of the supposed injury, Mr. McGuigan continued to work though not well; that he was operated on; that a diseased condition of the abdomen was found around the appendix; and that there followed this operation within a few days.

The evidence furthermore shows that those who were most intimately associated with the case were not positive as to what the definite cause of his death was. In fact, the evidence fails to show a definite cause of death.

If he died from obstruction to the bowels, as Dr. Truesdale believes, then the immediate cause of his death did not begin until the date of his entering the hospital, as his bowels had been free up to that time. In view of the somewhat uncertain knowledge that we have gained from the testimony as to what

caused his death, the minority member of the committee feels that a definite relation between the lifting and the death cannot be established, but he is willing, however, to give as his belief and personal opinion that the muscular strain and hard work undergone by the deceased previous to his illness were among the contributing factors which caused the illness which preceded his death.

CHARLES A. HOWLAND, M.D.

*Findings and Decision of the Industrial Accident Board on Review.*

A claim for review having been filed, the Industrial Accident Board heard the parties at the City Hall, Fall River, Mass., on Wednesday, July 2, 1913, at 10.30 A.M.

The insurer was represented by Mr. William A. Gunning and the widow of the employee by Dr. John W. Coughlin. The insurer contended that the findings of the arbitration committee were not supported by the law or evidence presented.

McGuigan was employed to lay a floor in the house of Mrs. Waring. While laying it, it was necessary to move a radiator which was at the time on the side of the wall. It weighed about 300 pounds. Mr. McGuigan was in the room alone, and after being there some time working, the radiator was found in the middle of the room. There was no evidence that he was assisted in moving the radiator to the middle of the room.

Dr. M. B. Swift testified that he should expect to find some symptoms subjectively of pain and also the symptom of inability to pursue the occupation. Objectively, it would depend entirely on the condition which was produced as to whether there would be symptoms there or not. Something snapping would indicate very little unless he had had some previous trouble. This would simply aggravate it. He said he thinks there could be a connection between a strain of this nature and appendicitis. It might cause a congestion of the intestinal vessels throughout the entire course, and then appendicitis is produced. Dr. Murphy, an authority, says that 10 per cent. of 150 cases were traced to lifting. "I would say that any man having appendicitis following lifting would be a good deal sorer in twenty-four hours than the indications are this man was."

He said, taking the history of the case, he thought the logical proceeding would be that he would have appendicitis without lifting the radiator. He believes that the radiator could have caused it.

Dr. Philomen E. Truesdale, who performed the operation, said that the lifting would be a very prominent point, and would precipitate an attack. He did not think that the infection existed before the strain, but would not care to answer. "An appendix is like a chain, — it is as strong as its weakest link." If there is a weak spot, a man might live until eighty, but if he has a strain it might knock him out. He might have this infection and live until eighty, but this strain would produce his death. "I think his death was caused from intestinal obstruction and appendicitis."

Mrs. Margaret Waring testified that she went into the room and saw the radiator in the middle of the room. No one was helping him nor had any one entered the room. She said to him that he shouldn't have lifted it alone, he might hurt himself, and he answered, "I don't know but what I have." He complained of the pain next day when he was working at her house.

Mrs. Margaret E. McGuigan said when he came home Thursday night he said he had felt something snap in his side. He was never sick, and had never lost a half hour's work.

Dr. Arthur C. Lewis saw the injured man, and he told him he had lifted a radiator and ever since had been in pain; sent him to the hospital Saturday, April 19, 1913. From the history of the case he can connect the lifting of the radiator with the appendicitis. Appendicitis may be caused by other things, but not in this case. Dr. Lewis studied this case as a particular one.

The Industrial Accident Board confirms the decision and findings of the committee of arbitration and finds that the widow, Mrs. Margaret E. McGuigan, is entitled to compensation at the rate of \$10 a week from the insurer for a period of three hundred weeks, beginning April 16, 1913, the date of the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.



CASE No. 262.

RICHARD REDFERN, *Employee.*

JAMES BLAKNEY, *Employer.*

MARYLAND CASUALTY COMPANY, *Insurer.*

INCAPACITY FOR WORK. INSURER SUSPENDS PAYMENT OF COMPENSATION CLAIMING INCAPACITY AT AN END. CLAIM MADE THAT ASSAULT IN WHICH EMPLOYEE PARTICIPATED WAS CAUSE OF ANY EXISTING INCAPACITY. ALL INCAPACITY DUE TO INJURY. COMPENSATION AWARDED.

The insurer suspended the payment of compensation, claiming that all incapacity for work as a result of the injury had ceased. It was further claimed that any incapacity existing was due to an assault in which the employee participated. The evidence proved that the employee had not participated in the assault referred to, being present only at the time his son committed the said assault. *Held*, that the employee was entitled to further compensation, all incapacity being due to the injury.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Richard Redfern v. Maryland Casualty Company, this being case No. 262 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Timothy J. Feeney of Fall River, Mass., representing the employee, and Charles A. Howland, M.D., of Fall River, Mass., representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Fall River, Mass., Saturday, June 21, 1913, at 10 A.M.

It was admitted by the insurer that Richard Redfern, the injured employee, had received an injury arising out of and in the course of his employment as a laborer while in the employ of James Blakney as the result of a fall from a staging. The injury was received on Tuesday afternoon, Jan. 21, 1913, at about 1.30 o'clock. The employee had his second finger of the right hand broken, ankle sprained and side bruised.

The insurer suspended compensation on the basis of reports filed by the Union Hospital, at which he was receiving medical

attention, these reports indicating that his injury no longer required medical treatment. It was also claimed that an assault case in which the employee, the said Redfern, figured was a contributing cause to his present incapacity. Compensation was suspended on May 20, 1913.

The evidence proved that Redfern had not participated in the assault in question, but that he was present at the time his son assaulted a man named Brighty. It was also shown that the said Redfern was undergoing medical treatment at the Union Hospital at the time of the hearing and was rapidly recovering.

William A. Gunning, for the insurer, stated that he would find work which the employee could perform, and it was agreed that the said employee should accept it.

The committee finds that the employee was totally incapacitated up to and including the date of the hearing, June 21, 1913; that his average weekly wages were \$12; that there is due him from the insurer a weekly payment of \$6 from May 20, 1913, to June 21, 1913; that he is entitled to further payment on account of the continuing incapacity, based upon the average weekly wages earned by him at the employment which the insurer agrees to provide, in accordance with section 10, Part II. of the act.

JOSEPH A. PARKS.

TIMOTHY J. FEENEY.

CHARLES A. HOWLAND, M.D.

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CASE No. 264.

MATTHEW DIAS, *Employee.*

CHAMPION-INTERNATIONAL COMPANY, *Employer.*

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

PLEURISY, DEVELOPING FROM AN INJURY, CAUSES INCAPACITY FOR WORK. EMPLOYEE ENTITLED TO COMPENSATION. FULL BOARD REVERSES COMMITTEE OF ARBITRATION UPON REPORT OF IMPARTIAL PHYSICIAN.

The employee, while engaged in the performance of his work, was injured by reason of a roll of paper weighing 500 pounds falling against his back. No claim was made by the employee that the pleurisy or tuberculosis and the troubles therefrom were due to the alleged injury, and the evidence is very slight that he suffered and was incapacitated from an injury as above described.

*Held*, that the committee cannot find a preponderance of evidence in favor of the employee's claim.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board, revising the findings of the committee of arbitration and upon the evidence of the impartial physician who examined the employee for the Board, finds that pleurisy, following the injury, is the cause of the incapacity for work and awards compensation.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Matthew Dias v. American Mutual Liability Insurance Company, this being Case No. 264 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Daniel A. Arundel, representing the employee, and G. Hawthorne Perkins, representing the insurer, after being duly sworn, heard the parties and their witnesses at Lawrence, Wednesday, June 4, 1913, at 12.30 P.M.

The injured employee, sometime before Dec. 5, 1912, was in the employ of said employer, and during this time he was suffering from pulmonary tuberculosis. Since Dec. 5, 1912, he had an attack of pleurisy and underwent several surgical operations to relieve one of his lungs from a tubercular condition, and during two weeks in the said month of December he was treated by a private physician for some trouble, and after this at two different hospitals.

The employee claimed that about December 5, while in the course of his employment, a roll of paper weighing about 500 pounds, which he was moving onto a truck, fell against his back and injured him; and that he was so much injured thereby that he was incapacitated for work for a considerable period.

No claim was made by the employee that the pleurisy or tuberculosis and the troubles therefrom were due to the alleged injury. While it is evident that the employee was ill during all this time, with a likelihood of suffering accompanying it, the evidence is very slight that he suffered and was incapacitated from an injury as above described.

The only information that was given or came to the employer

at or about the time of this alleged injury was that the employee was suffering from an illness. The doctor who first treated him during the two weeks following December 5, the time of the alleged injury, did not testify at the hearing; and it appeared that at the hospital, to which the employee went immediately following this period of two weeks, he made no complaint of having received such an injury or to be suffering therefrom.

He testified that at the second hospital to which he later went, and where he was operated upon on account of the tuberculosis, he did refer to the alleged injury.

The committee cannot find a preponderance of evidence in favor of the employee's claim, and accordingly find in favor of the insurer.

DAVID T. DICKINSON.

G. HAWTHORNE PERKINS.

DANIEL A. ARUNDEL.<sup>1</sup>

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Thursday, July 3, 1913, at 10 A.M., and revising the decision of the committee of arbitration finds as follows: that Matthew Dias was working for the Champion-International Company; that his weekly wages were \$9.97; that his injury, arising out of and in the course of his employment, occurred on Dec. 2, 1912, and was caused by a roll of paper, weighing about 500 pounds, which he was moving onto a truck, falling against his back and injuring him.

Dr. Francis D. Donoghue, who examined the employee at the request of the Board, testified as follows: —

This man's history is a history of pleurisy developing, following a blow on Dec. 2, 1912, the pain increasing for the following three days, until he was finally obliged to give up work. Eight or nine days after the accident he went to see a doctor, who found him to be a hospital case and sent him to the hospital, from which he was sent to Tewksbury on January 11. Three weeks after getting to Tewksbury he was operated upon, and

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<sup>1</sup> Dissenting.

examination shows that he probably underwent an operation for left-sided empyema, or an abscess which developed on an old pleurisy. In other words, he had first an accumulation of serous fluid in the left pleural cavity, which became infected by the entrance of some pus-producing germ. He does not show, aside from the left side, well-marked tuberculosis, but he shows a condition which possibly may be tubercular. This appears to be a case in which there was a pleurisy following the blow, followed by the slow development of fluid in the pleura, which became septic, leading to the operation of draining, and from this he is not entirely well. It results from an injury. If he had had tubercular trouble before the accident a blow such as he claims to have received would have aggravated the tubercular trouble. He is suffering from the effects of a septic process in the pleura and from lack of nutrition. If he were taken now and put to bed and properly fed it would materially modify everything here presented on examination.

The Board further finds, upon the evidence, that the said Matthew Dias is entitled to compensation at the rate of \$4.98 a week, this being one-half his average weekly wage, from the fifteenth day after the injury, that is, from Dec. 16, 1912, to July 3, 1913, a total compensation of \$141.57 being due as a result of the injury; and that all incapacity as a result of the injury ceased on July 3, 1913.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
EDW. F. MCSWEENEY.

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CASE No. 269.

JOSEPH SLAMAN, *Employee*.

ATLANTIC COTTON MILLS, *Employer*.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY, *Insurer*.

INCAPACITY FOR WORK. COMPENSATION DUE EMPLOYEE IN  
ACCORDANCE WITH HIS ABILITY TO EARN WAGES. IMPAR-  
TIAL EXAMINATION BY PHYSICIAN APPOINTED BY BOARD.

The employee was injured by reason of the revolving blade of the beater upon which he was employed striking his left arm and causing a compound fracture of the ulna. The insurer suspended compensation, justifying its action upon the

medical records in the case. The employee's physician testified that he was incapacitated for work at the time of the hearing. An impartial examination was made by a physician appointed by the Board, and he reported that "the length of time it will take to get a flexible arm depends on how vigorously he endeavors to make motions to stretch out the scar tissues which envelop both the skin and muscles under it."

*Held*, that the employee is entitled to compensation during incapacity.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Joseph Slaman *v.* American Mutual Liability Insurance Company, this being case No. 269 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Rashid A. Bistany of Lawrence, Mass., representing the employee, and Hawthorne Perkins of Lawrence, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Lawrence, Mass., Thursday, June 12, 1913, at 2 P.M.

Joseph Slaman, the employee, was injured Saturday morning, Dec. 14, 1912, at 7 o'clock, a revolving blade of the beater upon which he was engaged striking his left arm and causing a compound fracture of the ulna. It was agreed that the injury arose out of and in the course of his employment, and the only question at issue was whether his incapacity for work as a result of the injury had ended.

The insurer, basing its claim upon the records of the Lawrence General Hospital, which indicated that Slaman was only a house-patient there for three days, then becoming an out-patient, put in evidence indicating that he only made ten visits to the out-patient department in January and two visits in February, the last record being February 11. Compensation was stopped by the insurer on May 3, 1913, the claim being made that this action was justified by the facts in the case.

The employee, through his attending physician, Dr. Redmond, proved that he was incapacitated at the time of the hearing as a result of the injury, and the request was made that an impartial examination be made, as provided by section 8, Part III. of the act.

The committee thereupon requested that Dr. Francis D. Donoghue examine him, and the physician reports: —

This is apparently a case in which the left ulna was broken, and in which there was a cutting of the bellies of some of the flexor tendons of the hand. This, in healing, has left a puckered and sensitive scar, and he has not made the vigorous efforts to loosen it up that are necessary for him to get a good arm. He can do most of the things with his arm now that he could before, but on rotating his arm outward there is some restriction. The length of time it will take to get a flexible arm depends on how vigorously he endeavors to make motions to stretch out the scar tissues which envelop both the skin and muscles under it.

The committee finds that the average weekly wage of the employee is \$8.10, and that the said employee is entitled to the payment of \$4.05 weekly on account of total incapacity for work, dating from May 3, 1913, the date that the insurer made the last payment, this compensation to be continued until the employee finds, or is provided with, work that his present incapacity, as a result of the injury, will not prevent him from performing; and the committee recommends that, in accordance with the report of the impartial physician, the said Joseph Slaman, the employee, make "the vigorous efforts to loosen up (the puckered and sensitive scar) that are necessary for him in order to get a good arm," and that he immediately offer his services to his former employers in any employment that he can perform, his compensation to be paid in accordance with section 10, Part II., if the employment in which he engages brings in less wages than before the date of the injury.

JOSEPH A. PARKS.

RASHID A. BISTANY.

*Dissenting Opinion.*

1. The examination of Dr. Donoghue, upon which our findings were to be based, does not show the total incapacity which would call for full compensation dating from May 3, 1913.

2. The employee did not prove that he was incapacitated at the time of the hearing.

3. There is no obligation on the part of the American Mutual

Liability Insurance Company or any one else to find or provide this man with employment.

4. There is nothing in the finding of the committee as drawn to prevent this employee from continuing to take the same undue advantage of the provisions of the act as he did from the middle of February until May 3, 1913, when compensation was stopped.

HAWTHORNE PERKINS.

CASE No. 273.

JEREMIAH MURRAY, *Employee.*

BOSTON ELEVATED RAILWAY COMPANY, *Employer.*

MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION, *Insurer.*

INCAPACITY FOR WORK. QUESTION ARISES AS TO WHAT CONNECTION, IF ANY, A SUBSEQUENT ACCIDENT, WHICH THE EMPLOYEE SUSTAINED BY FALLING DOWN STAIRS, HAS WITH ORIGINAL INJURY. COMMITTEE FINDS SECOND ACCIDENT RESULTS FROM FIRST INJURY.

The employee was originally injured while using a crowbar to lift a street car rail, the crowbar flying up and striking him a hard blow on the head. He was sixty-three years of age at the time of the injury. Subsequently he fell down the stairs at his home, and the committee of arbitration was asked to consider what connection, if any, the second accident had with the first in causing incapacity for work.

*Held*, that the second accident was caused by an attack of dizziness resulting from the first injury, and his incapacity for work has not been affected by the second accident.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Jeremiah Murray *v.* Massachusetts Employees Insurance Association, this being case No. 273 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson of the Industrial Accident Board, chairman, Benjamin A. Lockhart, Esq., representing the employee, and Arthur L. Tash, Esq., representing the insurer, after being duly sworn, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Monday, June 23, 1913.



The committee finds that said employee received an injury arising out of and in the course of his employment with said employer on Aug. 24, 1912. The injury was caused by a crow-bar, which was being used to lift a street car rail, flying up and striking him a hard blow on the head. The employee was a man of sixty-three at the time of the injury.

His average weekly wages at the time of the injury were \$14.58, and he has been receiving a weekly compensation for total incapacity of \$7.29 up to the present time.

The only question before the committee was as to the extent of the incapacity which resulted from the injury, and particularly what connection with the case a subsequent accident, which the employee sustained by falling down stairs on Sept. 10, 1912, had, if any.

The committee finds that this second accident was caused by an attack of dizziness resulting from the first injury, which he received from the blow from a bar, and that his incapacity since the injury received in the course of his employment has not been affected by this second accident; that said employee has been wholly incapacitated as a result of the injury received in the course of his employment since he received it and still continues to be wholly incapacitated thereby; that he is suffering from pains in the head and attacks of dizziness or vertigo, which interfere with his working, impaired general strength, and a loss of power to move his head to either side but a short distance without at the same time turning his body.

He might be able to do certain forms of light work, but it is so uncertain that the committee does not feel justified in finding at present other than a total incapacity as above stated.

DAVID T. DICKINSON.  
BENJAMIN A. LOCKHART.  
ARTHUR L. TASH.

CASE 276.

CASSIE STEWART, *Employee.*

JONES & MARSHALL, *Employer.*

FRANKFORT GENERAL INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK. LUXATION OF THE ULNA, A RARE CONDITION, ARISING AFTER THE INJURY. EMPLOYEE AWAY ON VISIT AND INSURER CONTENTS UNUSUAL CONDITION WOULD HAVE BEEN DISCOVERED IF PROPER MEDICAL TREATMENT HAD BEEN GIVEN. COMPENSATION AWARDED FOR INCAPACITY, THERE BEING NO SERIOUS AND WILLFUL MISCONDUCT.

The sole question involved in this case was whether the incapacity resulting from the injury would not have been materially lessened if the employee had consulted proper medical authorities while in New York on a visit, "luxation of the ulna" being discovered after her return home. This is a rare condition, there being perhaps only three or four such cases known to the medical profession. There was no evidence of serious and willful neglect on the part of the employee.

*Held*, that the employee is entitled to compensation during incapacity for work.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Cassie Stewart *v.* Frankfort General Insurance Company, this being case No. 276 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Thomas E. Flanagan of Roslindale, Mass., representing the employee, and Herman Holt, Jr., of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Board Room, Pemberton Building, Boston, Mass., Monday, June 23, 1913, at 10.30 A.M.

It was agreed that the employee received an injury arising out of and in the course of her employment while in the employ of Jones & Marshall, at their restaurant, Merchants Row, Boston, Mass., Tuesday afternoon, Dec. 17, 1912, at about 3 o'clock, a fall on the floor causing a Colles fracture of the wrist.

The question at issue was whether the injured employee, while on a visit to relatives in New York with the knowledge and consent of the insurer, had taken the necessary precaution and care necessary for the speedy restoration of the injured member to its normal condition. It was contended that had the injured employee consulted proper medical authorities in New York the unusual condition would have been discovered and her total incapacity for work shortened. The insurer stopped the payment of compensation on April 8, 1913.

The evidence proved that the condition of the woman's wrist was rare, perhaps only three or four such cases being known to the medical profession. It was what is known as a luxation of the ulna, and comparatively little is known of it. There was a tearing of the ligaments, but everything is now in a favorable condition for an operation which will be performed by Dr. Frederic J. Cotton. It will require from six to possibly ten or twelve weeks for the fracture to properly heal. Meanwhile, the employee will be totally incapacitated for work.

The committee of arbitration finds that Cassie Stewart, the said employee, did not retard her recovery through any serious and willful neglect on her part; that she is now totally incapacitated for work, said incapacity continuing; that her average weekly wages at the time of the injury were \$15, and that there is due the said employee from the insurer compensation at the rate of \$7.50 a week from April 8, 1913, and continuing until total incapacity ceases. If the incapacity becomes partial, payments shall be made in accordance with section 10, Part II. of the act.

JOSEPH A. PARKS.

THOMAS E. FLANAGAN.

HERMAN HOLT, Jr.

CASE No. 277.

IZA ETTA GRAY, WIDOW OF JOHN GRAY, *Employee*.

WESLEY N. GRAY, *Employer*.

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer*.

LIVING WITH HUSBAND AT TIME OF DEATH. WIDOW ENTITLED  
TO COMPENSATION.

The sole question in dispute was whether the claimant was the widow of the employee. The evidence showed that the claimant was the widow and that she lived with her husband at the time of his death.

*Held*, that the widow is entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Iza Etta Gray v. Fidelity and Casualty Company of New York, this being case No. 277 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll of the Industrial Accident Board, chairman, Arthur N. Newhall, representing the employee, and Horace G. Pender, representing the insurer, heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Friday, June 13, 1913, at 10 A.M.

The only question in dispute was whether the claimant, Iza Etta Gray, was the widow of John Gray.

The committee of arbitration finds, in accordance with the evidence, that the said Iza Etta Gray is the widow of John Gray, the employee, and she was living with him at the time of his death, and that she is entitled to compensation at \$9 a week for three hundred weeks, beginning May 23, 1913.

JAMES B. CARROLL.

ARTHUR N. NEWHALL.

HORACE G. PENDER.

CASE No. 278.

JOHN BANVILLE, BY CELINA BANVILLE, WIDOW, *Employee*.

ROBERT O. BENT, *Employer*.

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer*.

LIVING WITH HUSBAND AT TIME OF DEATH. WIDOW ENTITLED TO COMPENSATION.

The insurer desired a finding by the committee of arbitration as to whether the claimant was the widow of the employee. The evidence showed that the claimant was the widow and that she lived with her husband at the time of his death.

*Held*, that the widow is entitled to compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Celina Banville, widow of John Banville, *v.* Fidelity and Casualty Company of New York, this being case No. 278 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Paul N. Chaput, representing the employee, and Horace G. Pender, representing the insurer, heard the parties and their witnesses at the City Hall, Lynn, Mass., on Thursday, June 26, 1913, at 10.30 A.M.

It was agreed that the injury to the deceased employee arose out of and in the course of his employment as a carpenter for Robert O. Bent, said injury occurring on Wednesday afternoon, April 30, 1913, at about 4 o'clock, the employee falling from a staging about 30 feet from the ground, striking on his head and dying almost instantly. The insurer desired a finding as to whether the claimant was the widow of the employee.

There was no dispute as to his average weekly wages, the employee earning 50 cents per hour, and the widow being entitled to the maximum of \$10 a week, under the provisions of the act.

The committee finds upon the evidence that Celina Banville, the claimant, is the widow of the said John Banville, the deceased employee, with whom she was living at the time of his

death, and that there is due the said widow from the Fidelity and Casualty Company of New York, the insurer, the sum of \$10 a week for a period of three hundred weeks from the date of the injury, April 30, 1913.

DUDLEY M. HOLMAN.  
PAUL N. CHAPUT.  
HORACE G. PENDER.

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CASE No. 279.

MARY STRONG SPICER, WIDOW OF EDSON SPICER, *Employee*.  
GEORGE T. RENDLE, *Employer*.  
FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer*.

LIVING WITH HUSBAND AT TIME OF DEATH. WIDOW ENTITLED TO COMPENSATION.

The insurer desired a finding by the committee of arbitration as to whether the claimant was the widow of the employee. The evidence showed that the claimant was the widow and that she lived with her husband at the time of his death.

*Held*, that the widow is entitled to compensation.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Mary Strong Spicer v. Fidelity and Casualty Company of New York, this being case No. 279 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, Artemus B. Reade of West Somerville, Mass., representing the widow, and Horace G. Pender of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Friday, June 27, 1913, at 9.45 A.M.

The widow, Mary Strong Spicer, testified that she was the widow of Edson Spicer, stating that she had been previously married, her first husband dying about seven years prior to her marriage to the said Edson Spicer. A marriage certificate was introduced, as follows: —

No. 3415.

*Marriage Certificate.*

It is hereby certified that I, this day, solemnized marriage between Edson Spicer of Spencer's Island in the County of Cumberland and Province of Nova Scotia and Mary Strong of Spencer's Island under a license dated the seventeenth day of March, 1890.

Seventeenth day of March, 1890.

(Signed)

D. T. PORTER.

John M. Barteaux, residing at 876½ Main Street, Waltham, a brother of the widow, testified that he was present and witnessed the ceremony.

The insurer, through George W. Buck, agreed that the average weekly wages of the deceased were \$24.50, and that the injury causing his death arose out of and in the course of his employment.

The committee of arbitration finds that Mary Strong Spicer is the widow of Edson Spicer, the employee aforesaid, and directs that the said insurer pay to the said widow \$10 a week for a period of three hundred weeks from the date of the injury, that is, from May 8, 1913.

JOSEPH A. PARKS.

ARTEMUS B. READE.

HORACE G. PENDER.

CASE No. 284.

EDWARD LATAK, *Employee.*

VISCOL COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
*Insurer.*

REDUCTION TO ONE-TENTH OF NORMAL VISION WITH GLASSES.

IMPOSSIBLE TO WEAR A CORRECTING LENS AND OBTAIN  
SIMULTANEOUS VISION WITH THE NORMAL EYE. COM-  
MITTEE FINDS PRACTICAL VISION IS LESS THAN ONE-  
TENTH OF NORMAL. AWARDS ADDITIONAL COMPENSATION.

This employee received an injury which impaired the vision and necessitated a surgical operation and the removal of the lens of the left eye. By reason of the removal of the lens the vision of the injured eye became so blurred, and its image out of alignment with that of the other eye, that the employee got no more vision, when wearing glasses, in the injured eye than if he were not wear-

ing glasses. The operated eye, with a correcting glass, gave him a vision of four-tenths of normal; without a glass three-two-hundredths of normal. The weight of the medical testimony showed that this vision of four-tenths is only practicable in the event of the employee losing his sound eye, and that it is impossible to wear a correcting lens and obtain simultaneous vision with the other eye.

*Held*, that the vision of this employee, with the use of glasses in the injured eye, is only three-two-hundredths of the normal in such eye, and additional compensation is awarded.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Edward Latak *v.* Employers' Liability Assurance Corporation, Limited, this being case No. 284 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of David T. Dickinson, chairman, representing the Industrial Accident Board, Mr. Thomas J. Brassil of Cambridge, Mass., representing the employee, and W. Lloyd Allen, Esq., of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, 201 Pemberton Building, Boston, Mass., on Wednesday, June 25, 1913, at 2 P.M.

The committee finds that said employee received an injury arising out of and in the course of his employment with said employer on Oct. 28, 1912, by reason of a particle of metal or emery penetrating his left eye.

It was agreed and the committee finds that his average weekly wages at the time of the injury were \$15.78.

The injury necessitated a surgical operation and the removal of the lens of this eye. The vision of his right eye remained twenty-twentieths, or normal. He was left with a vision in the left eye without a glass of but three-two-hundredths of normal, and with a correcting lens, of twenty-fiftieths of normal. This operated eye, with a correcting glass, gives him a vision of four-tenths, but the committee finds, on the weight of the medical testimony before it, that this should be modified by



the statement that this vision of four-tenths is only practicable in the event of losing his sound eye, and that it is impossible to wear a correcting lens and obtain simultaneous vision with the other eye; so that in this case his practical vision is but three-two-hundredths of normal, that is, much less than the one-tenth mentioned in paragraph (b) of section 11, Part II. of the compensation act.

In accordance with the medical testimony, the committee finds that when the vision is impaired by the removal of the natural lens of the eye the use of glasses, in the great majority of cases, produces a double image of objects seen through them, so that the use of glasses is impracticable. The vision of the injured eye is so blurred, and its image out of alignment with that of the other eye, that a person injured as this employee gets no more vision, when wearing glasses, in the injured eye than if he were not wearing glasses. His vision while wearing glasses is only through the other well eye. The two eyes cannot be aided with glasses so that they will work together. As was stated in the course of the medical testimony, and as appeared to be the weight thereof, the eyes, with this form of injury, could not be harnessed together so that it would be practicable to use them with glasses. The injured employee with this form of injury could not use glasses without such serious discomfort as to cause pains and disorders in the head, and would get no higher vision from their use, in the injured eye, as a practical matter, than the three-two-hundredths to which his eye was reduced by the operation. The employee in this case and for these reasons is not using glasses, according to the advice of a competent oculist. The ineffectiveness of glasses in this manner applies particularly and almost exclusively to this form of eye injury known as an aphakic eye, that is, an eye without a lens. In the case of the great majority of eye injuries the ineffectiveness of glasses would not exist. When the natural lens is preserved there is not this double focus or image. When glasses are therefore used in the majority of eye injuries, that is, where the lens is preserved, and the vision is raised thereby to one-tenth or more of normal, the two eyes would see together and the increased vision obtained by the glasses would be useable, and practically existent.

In such latter type of cases an increased power of vision by glasses to one-tenth of normal or more would have to be held to disentitle an injured employee to any added compensation for such eye injury, by reason of the section in the statute applicable thereto.

The committee therefore finds that the vision of this employee with the use of glasses, in the injured eye, is only three-two-hundredths of the normal in such eye, and therefore finds that he is entitled to the additional compensation provided in paragraph (b), section 11 of Part II. of the act, to wit: the sum of \$7.89 for a period of fifty weeks from Oct. 28, 1912, the date of the injury, at which time his vision commenced to be reduced to one-tenth of its normal with glasses. The committee also finds that said employee is entitled to compensation for two and three-sevenths weeks' total incapacity for work, resulting from the injury, viz., \$19.16, said period of incapacity occurring after the fifteenth day following the injury. There is also due said employee the sum of \$2 for medicines purchased by him on account of said injury during the first two weeks after the injury.

The employee requested the five following findings of facts at the hearing, of which request No. 1 was given and the others denied:—

1. That the petitioner has sustained, as the result of the injury in question, a reduction to one-tenth or less of normal vision in his left eye with glasses.

2. That the insurer did not furnish the petitioner with reasonable medical and hospital services between Jan. 30, 1913, and Feb. 13, 1913.

3. That the insurer did not furnish him with reasonable medical and hospital services at any time.

4. That the petitioner expended for reasonable medical and hospital services between Jan. 30, 1913, and Feb. 13, 1913, the sum of \$21.43.

5. That in addition to said sum of \$21.43 the petitioner expended for reasonable medical services the following sums, to wit:—

Dec. 15, 1913, to Dr. Hawkins, . . . . .	\$5
Jan., 1913, to Dr. Hawkins, . . . . .	5
Jan. 12, 1913, to Dr. Hawkins, . . . . .	5
	<hr/>
Total, . . . . .	\$15

DAVID T. DICKINSON.

THOMAS J. BRASSIL.

*Dissenting Opinion.*

*Finding of Facts.* — It is not in dispute that with glasses the vision in either eye tested singly is above one-tenth of normal, the vision of the right eye being ten-tenths or normal, that of the left or injured eye at least four-tenths plus of normal. In other words, with glasses the employee always has and will continue to have capacity for at least four-tenths plus of normal vision with his left eye, the injury producing a faulty correlation of the two eyes when working together, occasioned by the loss of the natural lens of the eye. All the doctors agree that this correlation would be practically as faulty, causing the same difficulties, with reduction in the left eye only to nine-tenths of normal vision.

*Ruling of Law.* — Part II., section 11, clause (b) gives fifty weeks added compensation to the employee provided there is a "reduction to one-tenth of normal vision in either eye with glasses." This clause must refer to injuries which reduce the normal vision and which reduce it to one-tenth of normal vision in either eye with glasses. The act must be construed as it reads, and no new matter added thereto, even though the Legislature in drafting it showed ignorance of eye troubles, and in spite of its working a hardship on the employee in this case. The clause does not suggest compensation for the failure of glasses to work practically by reason of faulty correlation of the eyes. This is not an injury so much to the vision as it is one to the correlation of the eyes. The clause cannot be broadened to take in entirely new matter and thus be shipwrecked.

I have not considered its being impractical for him to wear glasses and thus having to go without them, as the clause only refers to the condition of the vision in either eye with glasses.

It is a hard case for the employee. My duty, I feel, is to

interpret and construe the present clause and not legislate new matter into it.

I therefore find that in either eye with glasses the employee has more than one-tenth of normal vision, though there is a faulty correlation; and that, therefore, the employee does not come within clause (b).

W. LLOYD ALLEN.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., Thursday, Oct. 9, 1913, at 2 P.M.

The case was submitted on the same evidence as that before the committee of arbitration and with no additional evidence, and the Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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CASE No. 286.

PASQUALE SUCCO, *Employee.*

COUGHLAN & SHEILS COMPANY, *Employer.*

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

INCAPACITY FOR WORK. EVIDENCE INDICATES THAT THE EMPLOYEE IS PARTIALLY INCAPACITATED FOR WORK AS A RESULT OF THE INJURY. COMPENSATION AWARDED IN ACCORDANCE WITH EVIDENCE, BASED UPON WAGES EARNED BY EMPLOYEE.

The employee claimed that he was incapacitated, and asked that compensation be awarded him during his incapacity for work. The medical evidence indicated that he was partially incapacitated for work at the time of the hearing.

*Held*, that compensation on account of partial incapacity for work should be paid the employee, the amount of compensation to be determined by the wages earned by him.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Pasquale Succo *v.* Fidelity and Casualty Company of New York, this being case No. 286 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of the Industrial Accident Board, chairman, James C. Funnell of Boston, Mass., representing the employee, and Horace G. Pender of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Friday, June 27, 1913, at 10 A.M.

It was agreed that the employee, Pasquale Succo, was injured on Monday afternoon, Dec. 16, 1912, at 2 o'clock, said injury arising out of and in the course of his employment. Succo, while employed as a bracer, was engaged in knocking out braces with a sledge hammer, and, missing a blow, fell to the ground, a distance of about 35 feet, fracturing lower end of radius. His average weekly wages were \$23.

The insurer paid compensation up to and including June 2, 1913, claiming that his total incapacity for work had ended, and introduced evidence showing that the injury was fully healed at the time of the last examination, May 28, 1913. The more the ankle was used the better it would become, the employee showing a disinclination to use it. A statement from the employee's physician was offered, indicating that he was partially incapacitated as a result of the injury.

The committee finds that the total incapacity for work which the employee suffered as a result of the injury ended on June 2, 1913, and that he is now partially incapacitated and entitled to compensation from the insurer, as provided by section 10, Part II. of the act, said compensation on account of partial incapacity to date from June 2, 1913, and to continue during said partial incapacity, the amount of weekly compensation to be determined by the wages earned by the employee hereafter.

JOSEPH A. PARKS.

JAMES C. FUNNELL.

HORACE G. PENDER.

CASE No. 290.

SUSAN DOHERTY, *Employee.*

J. R. WHIPPLE COMPANY, *Employer.*

EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,  
*Insurer.*

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.

DISHWASHER, OFF DUTY, RETURNS TO HER ROOM IN THE  
HOTEL. FALLS ON STAIRS AND BREAKS ARM. NOT EN-  
TITLED TO COMPENSATION.

The employee, a dishwasher at a Boston hotel, had finished her work for the day and went out to make certain purchases. Her working hours were from 7 o'clock until 5 daily. In addition to her wages she was furnished board and room by her employers. Having finished her shopping she returned to the hotel, and while on her way to her room she fell and broke her arm. She claimed compensation.

*Held*, that the injury did not arise out of and in the course of her employment.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Susan Doherty v. Employers' Liability Assurance Corporation, Limited, this being case No. 290 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Edward F. McSweeney of the Industrial Accident Board, chairman, William H. Sullivan, representing the employee, and W. Lloyd Allen, representing the insurer, heard the parties and their witnesses at the Hearing Room of the Industrial Accident Board, Friday, June 27, 1913, at 2 P.M.

Susan Doherty was, on Dec. 24, 1912, employed by J. R. Whipple Company, owners of the Parker House, as a dishwasher in the steward's department at an average weekly wage, including the estimated cost of board and room, of \$9.16.

There was no dispute as to the facts of the injury. Susan Doherty's working hours were from 7 A.M. until 5 P.M. After these hours her time was her own to do with as she pleased. On the day in question, after finishing her work, she had her evening meal, went to her room, and about half after seven, it

being Christmas Eve, went out to do some Christmas shopping, returning to the hotel about 10.30 o'clock. She entered the hotel by the employee's entrance, and, on the way to her room, fell on some marble stairs breaking her arm, which injury disabled her from doing any work until April 1.

The insurance company contested the claim on the grounds that the injury did not arise out of or in the course of Susan Doherty's employment, and that she was intoxicated at the time the injury occurred, and, therefore, was guilty of serious and willful misconduct. It was shown that when the employee fell, breaking her arm, she also broke a bottle of whiskey which she was bringing into the hotel. Miss Doherty testified that this whiskey was given to her by a man whom she met on Hanover Street, with the request that she give it to her brother as a Christmas present from this man. Miss Doherty's sworn testimony that she did not drink and had never been drunk was contradicted by fellow employees, but the arbitrators find that there was not sufficient evidence submitted to justify the conclusion that Miss Doherty's fall was due to intoxication.

The question as to whether the injury to Susan Doherty arose out of or in the course of her employment depends on whether at the time of her injury she was within the ambit of her duty as a dishwasher in the Parker House, and whether this injury was incidental in any degree to her employment.

The committee of arbitration finds that at the time of the injury Susan Doherty's time was her own, and she owed the owner of the Parker House no duties until 7 A.M. the following morning when the time arrived for her resuming work. She might go when and where, and return, as she pleased during the hours between 5 P.M. and 12 P.M., when the employees' entrance was closed, and after midnight she might enter through the main entrance where her name was recorded. If during the hours between 5 P.M. and 7 A.M. she had fallen and broken her arm while away from the hotel she could not successfully claim compensation under the act, and the fact that she sustained this injury on the hotel premises while on her own time and on her own business does not, in the opinion of the arbitrators, change her status.

In the opinion of the arbitrators the meals and bed, in addi-

tion to the monthly wage of \$18 given to Susan Doherty by the J. R. Whipple Company for a stated day's work, must be considered as compensation for services and not as implying that the relation of master and servant existed during the hours when she was off duty.

The committee finds that the injury on December 24 to Susan Doherty did not arise out of or in the course of her employment, and in consequence she is not entitled to the reasonable medical and hospital services and disability payments provided by the Workmen's Compensation Act.

EDW. F. MCSWEENEY.  
W. LLOYD ALLEN.

*Dissenting Opinion.*

On Dec. 24, 1912, about 10.30 P.M., Susan Doherty, employed by J. R. Whipple Company, owners of the Parker House, as a dishwasher, while returning to her room in said Parker House fell on some marble stairs, breaking her arm, whereby she was unable to work for thirteen weeks, until about April 1, 1913.

On the day of her injury the plaintiff had finished her work about 5 P.M. and had spent the evening doing her Christmas shopping, returning to the hotel about 10.30 P.M. Part of the compensation paid the plaintiff was her room and board at the hotel, and she was required to return before midnight when she went out at night or otherwise get a permit to return later. The stairs on which she fell were stairs she was properly using to return to her room.

The insurance company defended this claim on the grounds that the plaintiff was intoxicated at the time of her injury, and also that the injury did not arise out of and in the course of her employment.

The burden of proving this intoxication was on the insurance company, and I find (and I understand the other arbitrators agree) that intoxication was not proved and that her injury was not due to the use of liquor.

The plaintiff fell upon the premises where she had a right to be and which were in the control of her employer; the use of the stairs was incidental to her employment and arose out of



her employment. At the time of her injury she was going to the room which had been assigned to her and the use of which was a part of the consideration of her employment and was used in the course of her employment, and I am unable to distinguish her case from *Kearon v. Kearon* (1911), 45 Ir. L. T. R. 96; 4 B. 435-C. A.

A seaman, off duty, left the vessel on business of his own; while returning to the ship he was injured: *held*, that the accident arose out of and in the course of his employment. (See, also, *Low (or Jackson) v. General Steam Fishing Co.*, 78 L. J. P. C. 148 A. C. 523; *Moore v. Manchester Liners, Lim.* (1910), 79 L. J. K. B. 1175; *Leach v. Oakley, Street & Co.*, 80 L. J. K. B. 313.)

From the above cases I conclude and find that the accident to Susan Doherty happened to her in the course of her employment and arose out of her employment, and therefore that she is entitled to eleven weeks' compensation at \$9.16 per week, and also to reasonable medical and hospital services for the first two weeks.

WM. H. SULLIVAN.

CASE No. 291.

FRANCIS J. SULLIVAN, *Employee.*

ALGONQUIN PRINTING COMPANY, *Employer.*

TRAVELERS INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK. EMPLOYEE, NOT BEING ABLE TO PERFORM REGULAR WORK, OFFERED LIGHT WORK. DECLINES TO ACCEPT, OBTAINING ANOTHER POSITION. COMPENSATION AWARDED, BASED UPON ABILITY TO PERFORM WORK OFFERED.

The employee was offered employment at work which the insurer claimed he could perform and he refused to accept, remaining at work in another grade of employment. The insurer asked the committee of arbitration to rule as to whether the employee was justified in declining to perform work which his incapacity as a result of the injury would not prevent him from performing, and the committee ruled that if, as a matter of fact, the employee could have performed the work tendered he was not justified in refusing it and claiming compensation.

*Held*, that the employee is entitled to compensation based upon the amount which the employee would have earned had he accepted the position tendered him, or half the difference between the old rate of wages and the new, during incapacity.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Francis J. Sullivan v. Travelers Insurance Company, this being case No. 291 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Joseph A. Parks of Fall River, representing the Industrial Accident Board, chairman, Augustus P. Gorman of Fall River, representing the employee, and John C. Sullivan of Fall River, representing the insurer, heard the parties and their witnesses in the Aldermanic Chamber, City Hall, Fall River, Saturday, June 28, 1913, at 10 A.M.

Francis J. Sullivan, the employee, was injured Aug. 3, 1912, while in the employ of the Algonquin Printing Company, his hand being crushed in the rolls of a calender machine. He came to an agreement with the Travelers Insurance Company and was paid compensation, based upon an average weekly wage of \$8.75, from Aug. 17, 1912, to Nov. 15, 1912, inclusive, signing a settlement receipt in full for all compensation due on account of the total incapacity resulting from his injury.

He afterwards claimed compensation on account of partial incapacity for work, under section 10, Part II. of the act, which the insurer declined to award, on the ground that he had been offered employment at work which he could perform and refused to accept, solely because he preferred to engage in another grade of employment. The insurer asked the committee to rule whether the employee was justified in declining to perform work which his incapacity as a result of the injury would not prevent him from performing. The committee rules that if, as a matter of fact, the employee could have performed the work tendered he was not justified in refusing it and claiming compensation.

The evidence was conflicting, however, the employee stating that from his experience in the print works and his knowledge of the requirements of the employment offered, he was certain that he could not perform it on account of the incapacity resulting from his crushed hand. Meanwhile, he was earning

\$6 a week, and on March 3, 1913, received an increase, making his wages \$10 a week. He claimed compensation for a period of fifteen weeks at half the difference between \$6 and \$8.75, or a total due of \$20.55.

The committee finds, basing its finding on the amount which the employee would have earned had he returned to the print works, that he is entitled to half the difference between \$6.75, the value of his services to his employers, and \$8.75, the wages received before the injury, that is, to the payment of \$1 a week for a period of fifteen weeks from Nov. 15, 1912, a total due the said employee from the insurer of \$15.

JOSEPH A. PARKS.  
A. P. GORMAN.  
JOHN C. SULLIVAN.

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CASE No. 292.

WILLIAM DIAZ, *Employee.*

FRED T. LEY & Co., *Employer.*

CONTRACTORS MUTUAL LIABILITY INSURANCE COMPANY, *Insurer.*

INCAPACITY FOR WORK. PERSONAL INJURY BY REASON OF  
SUDDEN DROP OF ELEVATOR WHILE CARRYING HOD OF  
BRICKS. NERVOUS SHOCK AND DISTURBANCE ADDS TO  
INCAPACITY. MALINGERING IN QUESTION. IMPARTIAL  
PHYSICIAN REPORTS. COMPENSATION AWARDED.

The employee, a hod-carrier, was carrying a hod of bricks on his shoulder when the elevator upon which he was standing suddenly descended a distance of five stories, the workman being very much bruised on his chest, back and side, and suffering from nervous shock and disturbance in consequence of the injury. The question of malingering was raised by the insurer, and an impartial physician was called upon to examine the employee and file a report. He reported, "That he took, and until to-day, has taken his pains too seriously is beyond question, but such a misinterpretation is a very natural consequence of his unpleasant experience, and so, I think, he is not malingering."

*Held*, that the employee is entitled to compensation.

Review before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms and adopts the findings of the committee of arbitration.

Appealed to Supreme Judicial Court.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of William Diaz v. Contractors Mutual Liability Insurance Company, this being case No. 292 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll of the Industrial Accident Board, chairman, Lafayette Burt, representing the employee, and Harry R. Elder, representing the insurer, heard the parties and their witnesses at the Court House, Springfield, Mass., at 11.30 A.M., June 26, 1913. The plaintiff was also represented by Arthur S. Kneil, and the Contractors Mutual Liability Insurance Company by Norman F. Hesseltine, who claimed that there was no substantial injury resulting from the accident.

This employee, a Portuguese, was working for the Fred T. Ley company, 499 Main Street, Springfield, Mass., on March 10, 1913. While carrying a hod of bricks on his shoulder the elevator upon which he was standing suddenly descended a distance of five stories, and he thereby suffered personal injury, being very much bruised in his chest, back and side. He was taken to the Springfield Hospital where he was under attention for a period of six days.

Dr. N. J. Dillon, the physician who first saw the injured man after the accident, testified that he found bruises on his back, right side and chest. On the afternoon of the same day he saw him again, and as the man complained of pain and he could see nothing the matter with him, he sent him to the Springfield Hospital for observation. He did not see him again until April 4, at the request of Mr. Ross, the adjuster for the Contractors Mutual Liability Insurance Company, when he examined him and found nothing objective, although the man complained of pain. He had taken no notice as to whether or not fright had caused any mental disturbance, and had not tested his nervous reactions, and admitted that such a condition might exist without any objective signs. He told the employee then that he was able to go to work, and said also that he had

difficulty talking with him, although Mr. Ross assisted in this regard. In his opinion the employee was able to go to work within the two-week period.

Dr. Charles J. Downey, called by the injured man after he had been discharged from the hospital, saw him at his home on the 21st of March. He testified that he found him in bed, and the injured man told him he had had a severe accident and was having a great deal of pain. His temperature was 103°, and his pulse rapid. Dr. Downey saw no evidence that his condition arose from his right side, but he had a reddened throat and was suffering from influenza. He prescribed for him, and saw him again on the 22d and 24th. On the last date he found him up and dressed, but still complaining of his side, and he indicated that he was considerably disturbed over his injury, and when the doctor told him that he was able to go to work, and suggested that he try to get some light work with the Fred T. Ley company, he said he would not be able to work all summer. He had apparently recovered from the influenza, and the doctor could find nothing the matter with the side. "It was evident that it was fixed in his mind that he had had a serious injury and pain in his side, whether conscious or otherwise." He had given him powders for the fever, but did nothing for the side, as it was strapped at the time, for the injured man left the hospital with the plasters on. He had complained of his back, and the doctor prescribed alcohol, as he was "aching all over from the grip." The doctor agreed that it was quite possible that such a fall might cause a nervous state or inspire an honest belief in injury. In his opinion this employee was as able to work within two weeks after the accident as he is now.

Charles R. Ross, adjuster for the insurance company, testified that he saw Diaz at his home on April 4, who said he was still sick. Dr. Dillon, at Mr. Ross' request, examined the employee that day, as stated above, and found nothing the matter with him. He saw him afterward on April 16 and May 14 at the man's home, and each time advised him to go back to work, telling him that "there would not be a cent in it for him," and that he "had better go back to work." Diaz said he would not be able to work all summer, and he would go back when he

was well. It was difficult to talk with him, as Mr. Ross talked in Spanish and Diaz partly in English and partly in Portuguese, which Mr. Ross understood a little.

On May 21 the employee was examined by Dr. Philip Kilroy of Springfield, at the request of the Industrial Accident Board, and he reported as follows: —

Undoubtedly at some time in the drop, Mr. Diaz must have had an experience neither gentle physically nor soothing mentally. But he had no bones broken, and no serious anatomic injury. He was bruised and bumped with resulting local swelling which, however, disappeared in a day or two.

As to his present condition. Malingering is a word as easy as it is harsh to use; that the man was hurt in the sense that he suffered pain is beyond question; such a simple performance as falling down stairs or falling off a step ladder may, from nothing but contusions, give pain sufficient to incapacitate a person for a day or more; this I can personally testify to. On the other hand, that he took, and until to-day has taken, his pains too seriously is also beyond question, but such a misinterpretation is a very natural consequence of his unpleasant experience, and so, I think he is not malingering. He needed not a blunt assurance that there was nothing the matter with him, but a sympathetic explanation of how he was keeping up his pain by thinking too much about it; the former course made him suspicious of being imposed upon, especially because of his limited knowledge of the English language; the latter course I have meted out to him this afternoon, and he left here much relieved, agreeing to forget it and to go to work as soon as he can get it — work.

It's now ten weeks since his accident. I believe that with tactful and patient handling he could have been put in a state of mind as well as body that would have permitted him to go to work in a couple of weeks after the accident, and yet I don't believe that his ten weeks' idleness have been due, in any sense, to dishonesty or laziness or a hope of gain.

The committee of arbitration, therefore, finds, on the evidence submitted and on the report of Dr. Kilroy, that William Diaz was employed by the Fred T. Ley company at an average weekly wage of \$15.40; that his injury arose out of and in the course of his employment; that he was incapacitated as a result of this injury for a period of ten weeks and three days from March 10, 1913, the date of the injury, and is entitled to compensation from March 24, the fifteenth day after the injury, to May 22, at the rate of \$7.70 per week, being half his average weekly wages, amounting to \$80.30.

JAMES B. CARROLL.  
LAFAYETTE BURT.

*Dissenting Opinion.*

I find that Diaz was able to return to work within two weeks from the date of accident, and that he is not entitled to compensation.

HARRY R. ELDER.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the insurer, the employee not being represented, at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Wednesday, Sept. 10, 1913, at 11.15 A.M., and affirms and adopts the findings of the committee of arbitration.

The Board further finds upon the evidence, and the report of the duly qualified impartial physician, Dr. Philip Kilroy of Springfield, that the employee, the said William Diaz, was incapacitated for work from March 10, 1913, the date of the injury, to May 22, 1913, in consequence of the injuries and resulting nervous shock and disturbance following a sudden drop of five stories in a freight elevator while carrying a hod of bricks.

The Board further finds, correcting the report of the committee of arbitration, that the said employee was entitled to medical and hospital services during the first two weeks after the injury, to wit, from March 10, 1913, to March 23, 1913, both dates inclusive, and to compensation from March 24, 1913, to May 21, 1913, both dates inclusive, a period of eight and three-sevenths weeks, at \$7.70 a week, that is, to the payment of \$64.90 in full for all incapacity for work resulting from the injury sustained by him on March 10, 1913.

JAMES B. CARROLL.  
DAVID T. DICKINSON.  
JOSEPH A. PARKS.  
EDW. F. MCSWEENEY.  
DUDLEY M. HOLMAN.

CASE No. 297.

ALFONSO BARBATO, *Employee.*

CONCRETE EXPANDED METAL CONSTRUCTION COMPANY, *Employer.*

ROYAL INDEMNITY COMPANY, *Insurer.*

INCAPACITY FOR WORK. MEDICAL EVIDENCE SHOWS THAT  
FURTHER INCAPACITY FOR WORK EXISTS. COMPENSATION  
AWARDED ACCORDINGLY.

The employee claimed that he was incapacitated for work as the result of his injury, the insurer claiming that no further compensation was due him. The medical evidence indicated that the employee was then totally incapacitated and that his incapacity for work would continue to a date in the future.

*Held*, that the employee was entitled to further compensation.

*Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Alfonso Barbato v. Royal Indemnity Company, this being case No. 297 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of James B. Carroll of the Industrial Accident Board, chairman, Rev. A. S. DiMiceli, representing the employee, and H. W. Hardy, Esq., representing the insurer, heard the parties and their witnesses at the Hearing Room, Pemberton Building, Boston, Mass., Saturday, June 28, 1913, at 10 A.M.

The employee was represented by his counsel, Mr. John V. Carchia, and the Royal Indemnity Company was represented by Mr. W. B. Luther.

The only question in dispute was the incapacity of the employee, and it was agreed that while he was in the employment of the Concrete Expanded Metal Construction Company he was injured; that his average weekly wage was \$12; and that compensation has been paid to him up to March 18, 1913.

After hearing the evidence of Dr. Donoghue, Dr. Kepler and Dr. Derobertis we find that he is still incapacitated and will be so incapacitated for a period up to July 15, 1913, and we therefore find that he is entitled to compensation at \$6 a week from



March 18, 1913, to July 15, 1913; that is, seventeen weeks at \$6, making a total of \$102.

JAMES B. CARROLL.

HENRY W. HARDY.

ANTONINO S. DiMICELI.

CASE No. 298.

SAMUEL SEGAL, *Employee.*

BOICE-PERRINE COMPANY, *Employer.*

FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Insurer.*

SERIOUS AND WILLFUL MISCONDUCT ON THE PART OF THE EMPLOYER. DOUBLE COMPENSATION CLAIMED. EVIDENCE INDICATES THAT THERE IS NO MERIT IN CLAIM. COMPENSATION AWARDED FOR INCAPACITY.

The employee, raising the question of serious and willful misconduct on the part of the superintendent, claimed double compensation. He stated that he was ordered to test a gasoline tank with gasoline in a room where there were open gas stoves, causing an explosion in which the said employee was injured. The weight of the evidence was against the employee's claim.

*Held*, that the employee is not entitled to double compensation on account of the serious and willful misconduct of the subscriber or his superintendent, and compensation on account of incapacity for work is awarded.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Samuel Segal v. Fidelity and Casualty Company of New York, this being case No. 298 on the files of the Industrial Accident Board, reports as follows:—

The committee of arbitration, consisting of Dudley M. Holman of the Industrial Accident Board, chairman, Mark Stone of Boston, Mass., representing the employee, and Horace G. Pender of Boston, Mass., representing the insurer, heard the parties and their witnesses at the Board Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Saturday, June 28, 1913, at 10 A.M.

The only question at issue in this case was whether the employee was entitled to double compensation under section 3, Part II. of the act, the claim being made that the superintendent, E. L. Jodat, had ordered the injured employee to test a gasoline tank with gasoline in a room where there were open

gas stoves, causing an explosion in which the said employee was injured. The subscriber approved of the appointment of Horace G. Pender, arbitrator for the insurer, as provided by section 5, Part III. of the act.

It was agreed that Samuel Segal, the injured employee, received an average weekly wage of \$15, and that the injury occurred on Monday afternoon, May 12, 1913, and arose out of and in the course of his employment.

Segal testified that E. L. Jodat, his superior, had informed him that he should not test gasoline tanks with water. They should be tested with gasoline. Following instructions, an explosion resulted and he was injured. Segal stated that he had tested gasoline tanks over eight years and was an experienced repair man. He had always tested these tanks with air and water wherever gas stoves were burning. A helper carried the gasoline to him.

E. L. Jodat testified that he had not given Segal any instructions; that Segal would not accept instructions, stating that he was an experienced man; and that gasoline is never used to test a tank inside the shop. This test is performed out in the yard.

Charles F. Stedman, Segal's helper, denied carrying the gasoline to Segal, and testified that he had seen nothing but water put into the tank and had not heard Jodat tell Segal to test with gasoline.

Henry J. Adami and a fellow employee named Daly both testified that tanks were never tested inside the shop with gasoline during their connection with it.

The committee of arbitration finds upon the evidence that the employee is not entitled to double compensation on account of serious and willful misconduct of the subscriber or his superintendent, under section 3, Part II. of the act, and that he is entitled to compensation on account of total incapacity from May 26, 1913, to July 7, 1913, inclusive; that is, to the payment of \$46.07.

DUDLEY M. HOLMAN.  
HORACE G. PENDER.

I discredit the testimony of E. L. Jodat, but submit to the compensation as determined by the arbitrators above named.

MARK STONE.

CASE No. 299.

CHARLES H. HUNNEWELL, *Employee.*

GEORGE W. VAN RANKIN COMPANY, *Employer.*

CASUALTY COMPANY OF AMERICA, *Insurer.*

ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT.  
NEUROSIS FOLLOWS INJURY TO EYE. AWARDED COMPEN-  
SATION ON ACCOUNT OF NEUROSIS. IMPARTIAL PHYSICIAN  
FILES REPORT.

The employee received an injury to his left eye and subsequently suffers from neurosis, which causes incapacity for work. One physician testified: "Sometimes he cannot see and you cannot persuade him that he can see. He thinks he cannot see, but all his organs of sight are there. This is a real thing to him. The only thing to do is to build the man up mentally and get him away from that condition in which he suffers." Injury to eye caused a nervous upset and a neurotic condition.

*Held*, that the employee is entitled to compensation to a definite future date.

Review of weekly payments before the Industrial Accident Board.

*Decision.* — The Industrial Accident Board affirms the findings of the committee of arbitration.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of Charles H. Hunnewell v. Casualty Company of America, this being case No. 299 on the files of the Industrial Accident Board, reports as follows: —

This case came on to be heard before a committee of arbitration, consisting of James B. Carroll of the Industrial Accident Board, chairman, Robert E. Gibson, Esq., representing the employee, and Clinton L. Bancroft, representing the insurer, at the Hearing Room of the Industrial Accident Board, Pemberton Building, Boston, Mass., Monday, June 30, 1913, at 10 A.M. W. B. Luther appeared for the insurer.

It was agreed that the employee was injured on the 25th of January, 1913, while in the employ of George W. Van Rankin Company; that his average weekly wages were \$30; that compensation has been paid him at the rate of \$10 per week up to May, 31, 1913. The only injury complained of was an injury to the left eye. It was the contention of the insurance company that at the time his compensation ceased, on the thirty-first day of May, he was cured, and that what trouble he had with

his eye was not the result of the accident. The material evidence in the case was as follows: —

Dr. Lawrence J. Dervin testified that when he called to see Mr. Hunnewell his eye was pretty well healed up outside, so he simply gave suggestions for complete healing. There was redness for about one-quarter of an inch along the upper eyelid, and the canthus inside of the eye was quite red in comparison with the other side. He was not an eye specialist, and had not treated Hunnewell before March 4 for any length of time. He thought he was a man of good health, and referred him to Dr. Kelleher.

Dr. Patrick Francis Kelleher, an eye specialist, testified as follows: he first saw Mr. Hunnewell on March 12, and made an examination of his eye. There was a slight redness of the left eye externally. The pupils reacted to light all right. The back of the eye showed some changes in the left eye. He had lots of pigmentation around the back of the left eye and on the cornea of that eye posteriorly. There was a small particle of opacity in the corner of the left eye, centrally opposite; he did not know how long it had existed. The blood vessels are tortuous and enlarged in the left eye. The back of the eye can be seen very distinctly. He has a permanent condition in the left eye, and will always have it. The lens has that opacity there which he will always have, and the blood vessels are tortuous and enlarged, which may mean much or little. The left eye is permanently disabled, and is not a normal eye. He did not see the injured man until six weeks after the accident, and he could not say whether the condition had existed a long time or not; it may be congenital, and he may have had it all the time. It may be due to the accident, but it is impossible to tell whether it was due to the accident or not. Aside from its being congenital, an injury or a blow might cause it. He questioned whether the burns such as Hunnewell described would cause it; he would ordinarily not expect it, and does not think it would, because the burn apparently was superficial, and the structures involved are deep. It might not be reasonable to suppose that the deeper structures would be injured by that superficial blow; it might be possible, however; this was just his opinion. It could not be caused by the injury de-

scribed except secondarily, but anything might cause symptoms which would secondarily involve deeper structures; his opinion is that it has not been done. There is no reason why he cannot see with the right eye except the fact that the blood vessels are not normal. The condition of the blood vessels in the right eye could not be caused by an injury. They are more tortuous than in an ordinarily healthy eye. There is no connection between this condition and the injury. It is a tortuous condition of blood vessels due to age as much as anything, probably a little arterial trouble. In the left eye he had pigment changes which refer to the inner gates of the eye and which occasionally occur, and he did not know why they should be caused. Pigment changes impair his vision. In summing up, Dr. Kelleher said that the blood vessels are not normal, that they are crooked and tortuous, and that it does not affect the vision of the left eye. There is about the same condition in both eyes. The injury had nothing to do with it. There is a change in the pigment, or coloring of the eye, that may possibly impair the vision, but the injury, in his opinion, has nothing to do with that. There is also another trouble which might cause impaired vision, which, in his opinion, is not the result of any external cause. There might be a functional change in the eye, which would impair vision, and it might result indirectly from an accident. Functional is another way of speaking of that hysterical condition. His condition is nervous, and there is nothing the matter organically with his eyes. It is a purely mental condition that produces this blindness. Sometimes he cannot see, and you cannot persuade him that he can see. He thinks he cannot see, but all his organs of sight are there. This is a real thing to him. The only thing to do is to build the man up mentally and get him away from that condition in which he suffers. His neurotic condition is worse than when he was first seen. Eliminating other causes, he might put down the accident as a probable cause of the neurosis. This man has had myopia, that is, he is nearsighted. He might recover in an hour, he might recover in a year, and he might never recover. He does not know.

Dr. Almon G. Morse of Boston testified as follows: the lens has a central posterior, round opacity. It is congenital.

He always had the opaque place in that lens; it reacted with light. There was nothing the matter with the eyes as far as he could see. The back part of the eye showed apparently normal, except for rather large, tortuous vessels. He could not see the white spots near the macula because he did not dilate his pupils. None of the symptoms he saw could result from the accident. The chief thing was a high grade of nearsightedness. Mr. Hunnewell said he never had his eyes examined before, and the doctor thinks he does not know how well or how little he ever saw. It is not an uncommon thing for a patient to think he sees all right, and he really does not see very well. There is a fairly good condition of the left eye with glasses. He got better vision with the injured eye than with the right eye; the reason was that his injured eye was more nearsighted. The vision of either eye, with correcting glasses, did not come up to normal; he thought this was due to the opaque little spot in the back part of the lens on the posterior surface of the capsule, which has always been there. He has about three-tenths of normal vision in the right eye, and a little better in the left eye; three-tenths plus in the left, seven-tenths was gone; he attributed the loss of vision to the central little spot in the back part of the eye, or something else which he could not see. If his blood pressure were high it would explain his condition. High blood pressure is a symptom of arterial degeneration due to his age, and would have an effect upon his eyesight. The injury might exaggerate existing conditions and might have hurt his general condition and caused the worry incident to it or following it. His loss of seven-tenths vision was previous to the accident. Loss of vision had nothing to do with the accident. He could not see, and did not know that he could not see. The reason he could see valves and marks on the elevator was just because he was nearsighted. If the diminished vision in the left eye was due to the accident the loss of vision in the right eye had nothing to do with it. He sees better with his left injured eye than he does with the right eye because he is less nearsighted in the left eye. If a man has perfect vision to-day and is hit in the left eye, and it is demonstrable in that left eye that he has lost seven-tenths vision, the same injury which affects the left eye only would

have nothing to do with the right eye, unless true sympathy starts. His vision could be improved with correcting glasses to three-tenths in each eye, and a man with the impaired vision of Mr. Hunnewell could do work that he has been doing. He could watch a chalk mark of 3 inches on a rope.

Dr. Frank E. Allard testified as follows: he examined Mr. Hunnewell March 21, 1913, and found slight evidence of an external injury. He was a man very much over weight, became short of breath in moving about, with blood pressure of 170 millimeters. Normal blood pressure ought not to be over 140. High blood pressure indicated arteriosclerosis; some of that may have been neurotic. He noticed that the injured man was rather nervous. An insurance company would not take a man at his age with blood pressure of 150. He was fifty-seven years of age.

William H. Regan, M.D., selected by the Industrial Accident Board to examine the injured man, reported as follows:—

Upon examination of Mr. Charles H. Hunnewell's eyes, April 26, 1913, I could not come to any conclusion. He refused to see with either eye, and after trying all tests for malingering, my examination only resulted in my opinion of the existing condition.

Right eye: fundus fairly clear, all vessels made out, and no pathological condition noticed except a slight haziness of crystalline lens. Left eye: red fundus reflex; could not see any of structures behind the crystalline lens. Projection test for cataract showed only two upright images and no inverted image, showing that lens was opaque. The iris showed a shadow upon the lens periphery, which shows lens opacity is not complete.

May 9, 1913, again examined Mr. Hunnewell's eyes and with more success. Right eye: fingers at 2 feet, but if I moved fingers 2 inches either nearer or farther from his eyes he would not say he could see them. After considerable talk I asked him if he would like to have a pair of glasses for reading, and with a plus 3.00 diopter glass he read the inclosed printed matter. I asked him to read the same size type in another paper and he refused. To the best of my knowledge I should say that this man's injury was not sufficient nor of the kind to cause the serious damage claimed.

There are no external signs which show this man's eyeballs have been damaged in the least by any external injury. There isn't any redness or swelling of eyes or appendages, and absolutely no cause for the pain he constantly says he suffers. Upon examination he nearly closes both eyes, and if you remonstrate by telling him you can't see he says it hurts him, a condition I do not think exists. He says he could see across the street before Dr. Morse played a light in his right eye, but since then he

can see nothing. I have proved this last statement to be false, as he read fairly small type for me which disclaims his statement.

To sum up I should say: right eye, a very slight haziness of lens, vision not materially affected. Left eye, unripe lens opacity which may or may not have been caused by heat, but from condition of both eyes should say not. Heat applied strong enough to cause any trouble with crystalline lens would naturally cause some trouble with structures before reaching lens, viz., the cornea, which in this case I can find no history of, and as far as I can see the external part of his eyeball has never given him any trouble. With a plus 3.00 diopter lens he read print at 14 inches; a normal eye with this lens would read small type at 14 inches.

I cannot estimate the amount of vision in right eye as he refuses to see anything at a distance, but it seems that a man capable of reading fairly small type at 14 inches with a glass that is needed for a normal eye at his age should also read at a distance.

The committee of arbitration finds, on the foregoing evidence, that for some time before the injury Charles H. Hunnewell was nearsighted; that he received the injury to his left eye, which in the ordinary course of events would have caused conditions which might be considered superficial, being confined to the lids or to the conjunctiva of the eye; that he shows blood pressure of 170; that the fundamental condition is of long standing, and that changes could go on in the eyes without the employee himself being conscious of the change; that the injury to the eye caused a nervous upset and a neurotic condition which is purely functional; and that while there is no organic condition in the eye which can be directly attributed to the accident and injury, he is in that mental and neurotic condition which in our opinion entitles him to compensation. The committee, therefore, finds that as a result of the injury he is entitled to compensation at the rate of \$10 per week from May 31 to Oct. 19, 1913, amounting to \$200.

JAMES B. CARROLL.  
ROBERT F. GIBSON.  
CLINTON L. BANCROFT.



*Findings and Decision of the Industrial Accident Board on  
Review of Weekly Payments.*

This case came before the Industrial Accident Board on review of weekly payments, under section 12, Part III. of the Workmen's Compensation Act, on Thursday, Oct. 16, 1913, the employee having received compensation in accordance with the findings of the committee of arbitration from May 31, 1913, to the date of the hearing on review, the said committee finding upon the evidence introduced at the hearing on June 30, 1913, that the employee was entitled to compensation at the rate of \$10 a week from May 31, 1913, to Oct. 19, 1913, and the employee claiming that he would be totally incapacitated for work for a longer period, and that he was entitled to additional compensation, under section 11 (b), Part II., for the loss of vision in the left eye.

Noting the refusal of the insurer to become a party to the hearing on review, the Industrial Accident Board heard the employee and his witnesses, and the evidence of the impartial physician and eye specialist appointed, at the Hearing Room, Pemberton Building, Boston, Mass., Thursday, Oct. 16, 1913, at 10 A.M.

William M. Smith, M.D., testified that the employee, Charles H. Hunnewell, was very neurotic, was suffering from hysterical myopia, and that his vision might be restored in a day, or remain as at the time of his examination for an indefinite period of time. This examination showed a vision of  $12/200$  in the injured left eye and  $9/200$  in the right eye.

Edward Williams testified that he had declined to give employment to Mr. Hunnewell because he understood that his vision was defective.

Dr. Francis D. Donoghue, who examined the employee as the impartial physician for the Industrial Accident Board, reported that, from a surgical standpoint, he had made a good recovery.

Dr. Henry B. Chandler, who examined the employee as the impartial eye specialist appointed by the Industrial Accident Board, testified that, from the appearance of the eye, the employee should have a vision of three-tenths of normal. This de-

gree of vision is enough to permit him to follow his usual occupation. He sees as well as he ever did, but, because of the failure on his part to exercise his will power, he tells you that he cannot see. As soon as his claim is adjusted and his mind is at rest in regard to the future his vision will improve.

Upon this evidence and that introduced before the committee of arbitration, the Industrial Accident Board finds that the employee has not suffered a reduction to one-tenth of normal vision in either eye with glasses, as a result of the personal injury sustained by him on Jan. 25, 1913; that his total incapacity for work on account of said personal injury will cease, in accordance with the findings of the committee of arbitration, on Oct. 19, 1913, subject to the right of the said employee to compensation on account of partial incapacity for work under section 10, Part II. of the Workmen's Compensation Act, depending upon his ability to earn wages.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

CASE No. 342.

GEORGE F. STONE, *Employee*.  
READ BROTHERS, *Employer*.  
TRAVELERS INSURANCE COMPANY, *Insurer*.

#### PNEUMONIA, FOLLOWING EXPOSURE, A PERSONAL INJURY.

The employee got his feet wet in a leaky boat; pneumonia supervened; incapacity for work followed.

*Held*, that this was a personal injury.

Review before the Industrial Accident Board.

Decision affirmed.

#### *Report of Committee of Arbitration.*

The arbitration committee appointed under the provisions of section 7, Part III., chapter 751, Acts of 1911, and amendments thereto, having investigated the claim of George F. Stone v. Travelers Insurance Company, this being case No. 342 on the files of the Industrial Accident Board, reports as follows: —

The committee of arbitration, consisting of Joseph A. Parks, representing the Industrial Accident Board, chairman, Frank M. Silvia of Fall River, Mass., representing the employee, and Edward Higginson, representing the insurer, heard the parties and their witnesses at the Aldermanic Chamber, City Hall, Fall River, Mass., Friday, Aug. 15, 1913, at 10 A.M.

The insurer refused compensation in this case solely upon the ground that the employee, George F. Stone, had not suffered an injury, and that he was not entitled to compensation on account of pneumonia, which had admittedly developed as a result of exposure by getting his feet wet in a leaky boat while in the employ of Read Brothers, a subscriber to insurance under the Workmen's Compensation Act.

The employee testified that he was ordered by Henry Read to attend to the lines to haul a boat off the cradle at the dry dock of Read Brothers, and was obliged to use a leaky skiff, or row boat in the performance of this duty. This boat always leaked, and its condition was well known to his employers. He had called their attention to its condition on several occasions, but nothing had been done to make it watertight. He was out on the morning of April 4, 1913, about half an hour, and got soaking wet up to his knees. When he returned to the float stage he immediately went to the boiler room to dry his clothing. He finished his work that day and went home. After drinking hot ginger tea he went to bed, and being ill the next morning sent for Dr. Perron, who stated that he was suffering from pneumonia, due to the exposure of the day previous. Dr. Perron treated him during the first two weeks; then a district nurse called and advised treatment at a hospital. He was then treated as an out-patient at the Union Hospital, Dr. Barre being among the physicians to treat him. He also stated that he had been out in the same leaky boat before, getting his feet wet, but had never been sick before in consequence of such exposure. His average weekly wages were \$10.50.

Drs. Perron and Barre testified that the employee had suffered from lobar pneumonia, which was directly traceable to the exposure in the leaky boat on April 4 last. Answering a question as to what pneumonia was, Dr. Barre stated that it was caused by a germ called pneumococcus, and that this germ

can be found in a perfectly healthy person. In his opinion the exposure to which the employee had been subjected would be a sufficient cause to excite this germ. Pneumonia usually developed in from two hours to two days after exposure of this sort.

The insurer contended that the employee was not entitled to compensation, since there must be a traumatic injury, occurring at a particular time, in order to entitle the employee to compensation under the statute, claiming that disease, or, as in this case, pneumonia, resulting from exposure, was not covered. It was agreed that the employee, the said George F. Stone, was in the employ of Read Brothers at the time he took the skiff from the float stage; that the skiff leaked; that the employee's feet were in water in consequence of the leaky condition of the boat; and that this injury arose out of and in the course of his employment; and it was further agreed that the pneumonia which developed the next day was caused by the exposure resulting from getting his feet wet in said leaky boat.

The committee finds that there is no merit in the contention of the insurer that there must be a traumatic injury in order that the employee may receive compensation under the Workmen's Compensation Act, the insurer claiming, following the English decisions, that mere disease, not contracted at a particular time and at a particular place by a particular accident, is not an injury under the statute. The English statute and the Workmen's Compensation Act, under which the claim of the employee is made, differ, the former requiring that an employee receive a "personal injury *by accident* arising out of and in the course of the employment," and the latter making it necessary only that an employee receive a "personal injury arising out of and in the course of his employment" in order to be entitled to compensation.

The House of Lords, in a long series of decisions, has declared that the phrase "personal injury by accident" is a compound expression; that it denotes an "unlooked-for mishap or an untoward event which is not expected or designed," and that "the accidental character of the injury is not removed or displaced by the fact that it set up a well known disease."

Buckley, L.J., in *Martin v. Manchester Corporation*, 5 B. W. C. 259, draws the distinction between "personal injury" and "personal injury *by accident*," declaring: "Contraction of disease is an injury. That injury may or may not be by accident. In order that the workman may succeed it is necessary that he should show that the disease was contracted by accident. It is for the workman to establish the accident, and he must show how, when and where . . . the circumstances took place which constituted . . . an accident."

The contracting of a disease is an injury. Getting the feet wet is an injury, if, as in this case, pneumonia results from the injury. And the employee is entitled to receive the benefits provided by the statute if, as in this case, his incapacity for work results from pneumonia caused by getting his feet wet, said personal injury arising out of and in the course of his employment.

The committee of arbitration finds that the employee, the said George F. Stone, received an injury, to wit, the wetting of his feet, and that in consequence of this injury a further injury, pneumonia, developed; that the injury, to wit, the wetting of his feet, arose out of and in the course of his employment; that the employee was totally incapacitated for work from April 4, 1913, to Aug. 15, 1913, the date of the hearing, compensation being due at the rate of \$5.25 a week; and the committee further finds, basing its finding upon the impartial report of Dr. Ralph W. Jackson, that the employee is now totally incapacitated, and compensation is due him during the continuance of said incapacity, the committee recommending that the employee attempt to resume work on Sept. 13, 1913, at which time the impartial physician believes that "he ought to be able to do reasonable hard work."

JOSEPH A. PARKS.

FRANK M. SILVIA.

EDWARD HIGGINSON.

*Findings and Decision of the Industrial Accident Board on Review.*

The claim for review having been filed, the Industrial Accident Board heard the parties at the Hearing Room, Pemberton Building, Boston, Mass., on Friday, Oct. 3, 1913, at 11 A.M., and affirms and adopts the findings of the committee of arbitration.

No new evidence was introduced, the matter coming before the Industrial Accident Board on review solely upon the claim of the insurer that pneumonia, resulting from getting the feet wet in a leaky boat, was not a personal injury under the Workmen's Compensation Act.

It was agreed by the parties that the employee, George F. Stone, was in the employ of Read Brothers at the time he took the row boat from the float stage; that the skiff leaked; that the employers had knowledge of its leaky condition and had made no attempt to repair it; that the employee's feet were in the water in consequence of the leaky condition of the boat; that the injury arose out of and in the course of his employment, and that the pneumonia which developed the next day was caused by the exposure which resulted from getting said employee's feet wet in said leaky boat.

The insurer raised the question whether pneumonia, without a trauma, can be considered a personal injury within the meaning of the term as used in the statute. The English cases do not, however, hold that a trauma or blow is necessary if compensation is to be paid for a "personal injury by accident." A miner who contracted pneumonia from inhaling carbon monoxide gas; a workman suffering from acute inflammation of the kidneys as the result of exposure caused by immersion in water cleaning a mill-race; a collier who suffered from nervous shock as a result of seeing and helping an injured fellow workman; and a miner who contracted pneumonia as a result of immersion in water at the bottom of the pit, were all found to be entitled to compensation under the English act. (*Kelly v. Auchenlea Coal Co., Ltd.*, 4 B. W. C. C. 417; *Sheerin v. Clayton & Co.*, 3 B. W. C. C. 583; *Yates v. South Kirby, Featherstone & Hemsworth Collieries, Ltd.*, 3 B. W. C. C. 18; *Alloa Coal Co., Ltd., v. Drylie*, 6 B. W. C. C. 398.)

The Massachusetts Workmen's Compensation Act provides that an employee who receives a personal injury arising out of and in the course of his employment shall be paid compensation if his employer is a subscriber at the time of the injury. It is not necessary that the personal injury be received as the result of an "accident," as provided by the English statute. Three conditions must be complied with if the employee is to receive compensation under the Workmen's Compensation Act: he must receive a personal injury, the personal injury so received must arise out of and in the course of his employment, and the employer must be a subscriber to the act.

Concerning the latter two of these conditions, the insurer raises no question; it is admitted that the pneumonia caused by the employee getting his feet wet in the leaky boat arose out of and in the course of his employment, and it is a fact that the employers are subscribers to insurance under the Workmen's Compensation Act. One condition remains to be complied with: is the getting wet of an employee's feet in a leaky boat from which pneumonia develops a personal injury under the act?

"Personal injury," as used in the Workmen's Compensation Act, is any injury, or damage, or harm, or disease which arises out of and in the course of the employment which causes incapacity for work and takes from the employee his ability to earn wages, the act providing for the payment of compensation "while the incapacity for work resulting from the injury is total," based upon half the average weekly wages of the employee, and "while the incapacity for work resulting from the injury is partial," based upon "one half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter," thus making it clear that the law was intended to provide for the payment of compensation for a "personal injury" which causes incapacity for work.

The English cases cited show that diseases are regarded as personal injuries, and Buckley, L.J., declares that the "contraction of a disease is an injury." (*Martin v. Manchester Corporation*, 5 B. W. C. C. 259.)

In this case the employee got his feet wet in a leaky boat,

pneumonia supervened, incapacity for work followed; we have the personal injury, resulting in disease; it arose out of and in the course of his employment; the employers were subscribers to the act; and compensation is due the employee for the incapacity resulting from said personal injury.

The Industrial Accident Board finds that pneumonia resulting from exposure and immersion, as agreed to by the parties, is a personal injury arising out of and in the course of the employment, and that there is due said employee from the Travelers Insurance Company a weekly compensation of \$5.25, dating from April 18, 1913, the fifteenth day after the injury, said weekly compensation to be continued during his total incapacity for work, in accordance with the provisions of the act.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.



SPECIAL BOARD CASES.

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MARION COAKLEY, BY HER GUARDIAN MARGARET C. THORNTON, *Petitioner*.

NORA COAKLEY, ADMINISTRATRIX OF THE ESTATE OF JOHN C. COAKLEY, EMPLOYEE, *Respondent*.

BOWLER BROTHERS, LTD., INC., *Employer*.

TRAVELERS INSURANCE COMPANY, INSURER, *Respondent*.

CHILD BY FORMER MARRIAGE ENTITLED TO SHARE EQUALLY WITH STEPMOTHER COMPENSATION DUE ON ACCOUNT OF DEATH OF FATHER. DECISION BY SUPREME JUDICIAL COURT.

The deceased employee, having remarried after the death of his first wife, left a widow and four children, one by his first wife, and an "agreement in regard to compensation" was filed with the Industrial Accident Board providing for the payment of half his average weekly wages to the widow. Later, a guardian having been appointed for the child by his first wife, a question was raised as to the right of said child to a share of the weekly compensation under the statute.

*Decision.* — The Industrial Accident Board rules that the widow, living with her husband at the time of his death and surviving him, is entitled to the compensation.

Messrs. Holman and Dickinson dissent.

Appealed to Supreme Judicial Court.

The Supreme Judicial Court rules that there should be an equal division between the widow and the daughter of the earlier marriage, who has no surviving parent.

*Agreed Statement of Facts.*

1. On the twenty-second day of December, 1912, John C. Coakley of Worcester, Mass., died as a result of personal injuries received by him while engaged in his work as an employee within the Commonwealth of Massachusetts, on Dec. 17, 1912.

2. At the time of his death he left surviving him his wife, Nora, and two minor children by his said wife, Cornelius and John, aged about five and two years, respectively; and said minor children were then living with their father and their mother, and the said Nora was then with child by said John C. All of these children, including the unborn child, were wholly dependent, in fact, for their support upon the earnings of the deceased at the time of his death.

3. At the time of Mr. Coakley's death he also left surviving him a minor child by the name of Marion B., then about eight and one-half years old, the daughter of a former deceased wife of Mr. Coakley. Marion also at the time of Mr. Coakley's death was living with him and her stepmother, Nora, and was entirely maintained and supported by Mr. Coakley, and had no property of her own, and was entirely dependent upon her father for support.

4. On the 1st of January, 1913, the said Nora, the widow of the said John C. Coakley, was duly appointed and qualified administratrix of his estate, and gave bond with sureties in the sum of \$500.

5. On Dec. 24, 1912, Margaret C. Thornton, the petitioner in this case, was duly appointed guardian of Marion by the Probate Court for the county of Worcester, and is still legally her guardian.

6. Soon after the appointment of the said Nora as administratrix, on Jan. 15, 1913, she came to an agreement with the insurer of the said John C. Coakley at the time of his death, which agreement has been duly approved by this Board, for the payment of \$9 per week for a period of three hundred weeks, in all the sum of \$2,700, in full settlement of the death benefit against said insurer for the injuries and consequent death of said John C. Coakley; and soon thereafter the said insurance company began to make the aforesaid payments to the said Nora Coakley as administratrix, as aforesaid.

7. The said administratrix, as advised by counsel, claims that as a matter of law under the Workmen's Compensation Act the petitioner in this case, Margaret C. Thornton, as guardian of said Marion B., is not entitled to receive any part of the aforesaid \$2,700 agreed upon and to be paid as afore-

said; and the said administratrix refuses to pay and has not heretofore paid anything to the petitioner for or on account of the support of said Marion B.

MARGARET C. THORNTON, *Guardian*,  
By her Attorney, MARVIN M. TAYLOR.  
NORA C. COAKLEY, *Administratrix of the*  
*Estate of John C. Coakley*,  
By her Attorneys, GARRITY & GARRITY,  
W. A. GARRITY.

*Petitioner's Requests for Rulings.*

Upon all the record and the agreed statement of facts in this case, the petitioner requests the following findings and rulings from the said Industrial Accident Board:—

1. That the facts be found as stated in the said agreed statement of facts.

2. That it be found and ruled as a matter of law that the minor child, Marion B. Coakley, was, under the provision of Part II., section 7 (c), of the Workmen's Compensation Act, wholly dependent for her support upon the said John C. Coakley, her father, at the time of his death.

3. That, also, upon all the record and the agreed statement of facts, and the law applicable to the case, the said Marion B. was, as a matter of fact, wholly dependent for her support upon the said John C. Coakley, her father, at the time of his death.

4. That the said Nora Coakley was, under the provision of Part II., section 7 (a), wholly dependent for her support upon the said John C. Coakley at the time of his death.

5. That the said Nora and the said Marion B., being both wholly dependents of the said John C. Coakley, are entitled to the whole of the death benefit as agreed upon and determined, \$2,700, the same to be divided equally among them.

6. The said Nora Coakley was not, at the time of the death of John C. Coakley, a "surviving dependent parent" as to Marion B. Coakley. Marion then had no "surviving dependent parent" within the meaning of Part II., section 7 (c).

By her Attorney,

MARVIN M. TAYLOR.

*Findings and Decision of the Industrial Accident Board.*

The above case came before the Industrial Accident Board on a petition brought by Marion B. Coakley by her guardian.

As set out in the agreed statement of facts, John C. Coakley at the time of his death left surviving him a widow and two minor children and an unborn child by this marriage, and also a child by a former marriage who was living with him at the time of his death.

The petitioner claims that a portion of the compensation due under the Workmen's Compensation Act should be paid to the petitioner, the guardian of the child of Mr. Coakley by the former marriage, the respondent administratrix contending that all the compensation belongs to the widow under the Workmen's Compensation Act.

Under section 6, Part II. of the Workmen's Compensation Act, the compensation in case of death is to be paid to the person or persons wholly dependent upon the employee's earnings for support; and under section 7, Part II., it is stated that a wife is conclusively presumed to be wholly dependent for support upon her husband, with whom she lives at the time of his death, and that the child is only wholly dependent when, under section 7 (c), there is no surviving dependent parent.

The Industrial Accident Board rules that the widow living with her husband at the time of his death and surviving him is entitled to the compensation.

In so far as the requests of the petitioner are inconsistent with this ruling they are refused, and in so far as they are in accordance therewith, they are given.

The petition is dismissed.

JAMES B. CARROLL.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

JUNE 12, 1913.

The undersigned member of the Board is unable to agree with the conclusion of the majority. I am of the opinion that section 6, Part II. of the Workmen's Compensation Act, refers to dependents of the deceased employee as a class, and provides

that the compensation shall be divided equally among them. This purpose should be carried out unless clearly modified by section 7.

The conclusive presumption in regard to the widow in section 7 is that her status is wholly dependent, without declaring her to be solely entitled to compensation. It simply saves the need of proof of her dependent status. The wholly dependent child by the first marriage, for whom the guardian makes this claim, is also conclusively presumed to be wholly dependent, because there is no surviving dependent parent, both parents of this child being deceased. According to the construction of the law which the majority feels compelled to adopt, this child, who is the most dependent and in need of natural protection, is excluded from compensation. As shown by the agreed statement of facts, the surviving widow by the second marriage has refused to pay this child any share of the compensation or to recognize it as having any rightful claim to the fund. If there had been no widow surviving, the compensation would be divided equally among all the children, according to the express provisions of the statute. As there is a dependent parent living, I am of the opinion that the compensation should be paid in equal shares to the widow and the four children, including the unborn child, all being wholly dependent.

DAVID T. DICKINSON.

JUNE 12, 1913.

The undersigned member of the Board is unable to agree with the conclusion of the majority. I am of the opinion that section 7 of Part II. clearly defines the status of those who are presumed to be wholly dependent for support upon a deceased employee, and that where more than one person is found to be wholly dependent the death benefits shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof.

In this case the widow is conclusively presumed to be wholly dependent for support upon the deceased employee, as she was living with her husband at the time of his death, as is required under (a) of section 7. The dependent child by the first mar-

riage is also conclusively presumed to be wholly dependent for support upon the deceased employee under (c) of section 7, which provides: "a child or children under the age of eighteen (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent."

In the case of this child by the first marriage there was no surviving dependent parent. The second wife, who is also conclusively presumed to be wholly dependent for support upon the deceased employee, is under no legal obligation whatsoever to care for said child by a former marriage, while in the case of her own children there is a moral and a legal requirement upon her for their support and maintenance. The children of the second wife by this deceased employee are not conclusively presumed to be wholly dependent for support upon the deceased employee, because in their case there is a surviving dependent parent.

Therefore, there are two persons who are wholly dependent under this section, the widow and a child by a former wife, and in accordance with the last paragraph of (c), "If there is more than one person wholly dependent the death benefits shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof," I find that the compensation should be equally divided between the widow and the child by the first marriage, who is particularly to be protected from the fact that she has neither father nor mother to look out for her or to provide for her. It seems to me that this case is clearly one that was thus particularly provided for by the specific terms of section 7, Part II.

DUDLEY M. HOLMAN.

JUNE 12, 1913.

*Decree of Supreme Judicial Court on Appeal.*

RUGG, C.J. This is a proceeding under the Workmen's Compensation Act. The question at issue is the division of the payments due to the dependents of John C. Coakley, who received personal injuries arising out of and in the course of his

employment and who died as a result. He left a widow, Nora, with whom as wife he was living at the time of his decease, two minor children who were children of Nora, a child of this marriage born since his death, and another child named Marion, by an earlier marriage. All the children are of tender years. The child Marion has no property of her own and was living in her father's family, entirely supported by him. The widow was appointed administratrix of the estate of John C. Coakley, and she has come to an agreement with the insurer, which has been approved by the Industrial Accident Board, for the payment to be made by it on account of his death. A guardian has been appointed of the child Marion, who by law is charged with the custody and tuition of the ward, she having no father or mother living. (R. L., c. 145, § 4; St. 1904, c. 163.) The widow and administratrix claims that as matter of law under the act the guardian is entitled to nothing, and she refuses to pay anything to her for the support of the ward.

The material provisions of the act are found in St. 1911, chapter 751, Part II., section 7, in these words: —

The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: —

(a) A wife upon a husband with whom she lives at the time of his death.

(b) . . .

(c) A child or children under the age of eighteen years . . . upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

It is plain from this provision that the widow is conclusively presumed to be wholly dependent. It is equally plain that the child of the former marriage also is conclusively presumed

to be wholly dependent, because in her case there is no surviving dependent parent. This language, as construed in the McNicol case, *ante*, means that the children of the deceased who are the children of the widow are not conclusively presumed to be dependent, because as to them there is a surviving parent. Analyzing the act with technical nicety, probably the last paragraph of section 7, above quoted, does not apply to the case at bar because it relates to "all other cases," and "such other cases," which must mean cases other than those specifically provided for in paragraphs (a), (b) and (c) of the section. It is true that no express provision is made for a case like the present, where there is more than one person beside orphaned children conclusively presumed to be wholly dependent. But the act should be interpreted broadly in harmony with its main aim of providing support for those dependent upon a deceased employee. Reading the section as a whole the purpose appears to be, though disclosed not in the clearest language, to divide the payments equally among those conclusively presumed to be wholly dependent. This is manifest by express words when there are two or more orphaned children. Equal provision is provided also, when, in case there is no one conclusively presumed to be wholly dependent, and dependency is determined as a fact, more than one is found to be wholly dependent. This interpretation may be supported as consonant with what reasonably may be supposed to have been the intent of the Legislature. When there are left a parent, and children who are the issue of the surviving dependent parent and the deceased, the natural instincts as well as the legal obligation combine to assure support to the children in case they need it. But in case of stepchildren there is neither the parental affection nor legal duty. The Legislature well might leave the support of children to their parent by blood, and hesitate to leave it to any one else when there is no parent by blood.

It is argued that the widow is entitled to the whole sum on the ground that she stands *in loco parentis*. These words are not found in the act. The voluntary assumption of the obligations of parenthood toward children of a spouse by another marriage is one favored by the law. They may be included



under the descriptive word family. (Mulhern v. McDavitt, 16 Gray, 404.) But there is nothing in the record at bar to show that the widow has assumed any legal obligation to support the stepdaughter. On the other hand, it is agreed that she declines to contribute anything to the guardian on whom by law is cast the duty of her care. It would be a hard thing to say that the words "surviving dependent parent" could have been intended by the Legislature to include one standing *in loco parentis* to a child, when the effect of such construction would be to debar such child, an orphan, in fact, from the benefit of a conclusive presumption which otherwise the act establishes in its favor. Parent commonly means the lawful father or mother by blood. It does not lend itself readily to a significance so broad as to include stepfather or stepmother, or any one standing *in loco parentis*. The use of such other word in common speech of itself has some tendency to indicate a different meaning. The arrangement of the words parent and child in the present act points to the consanguineous relation, and not to that by affinity. That it does not include one standing in the place of a parent seems to follow from the circumstance that there is no continuing obligation on one who has assumed such a relation. It may be abandoned at any time. The result is that there should be an equal division between the widow and the daughter of the earlier marriage, who has no surviving parent.

*Decree reversed. New decree to be entered in accordance with this decision.*

DANIEL MURPHY OF LANCASTER, MASS., PARTIAL DEPENDENT  
OF WALTER MURPHY OF LANCASTER, MASS., *Employee*.  
BIGELOW CARPET COMPANY OF CLINTON, MASS., *Employer*.  
AMERICAN MUTUAL LIABILITY INSURANCE COMPANY OF BOS-  
TON, MASS., *Insurer*.

IF DEATH RESULTS FROM THE INJURY. DEPENDENTS PARTLY  
DEPENDENT ENTITLED TO SAME PROPORTION OF WEEKLY  
PAYMENT AS AMOUNT CONTRIBUTED BEARS TO ANNUAL  
EARNINGS. SHALL VALUE OF BOARD BE DEDUCTED FROM  
AMOUNT CONTRIBUTED? INDUSTRIAL ACCIDENT BOARD  
RULES THAT BOARD SHALL NOT BE DEDUCTED FROM  
AMOUNT CONTRIBUTED. ENTIRE WAGES CONTRIBUTED.  
HALF WAGES, OR MINIMUM WEEKLY PAYMENT, AWARDED.

The employee, a minor, contributed all of his wages, amounting to \$5.67 a week, to his father. The father was not wholly dependent upon the wages of the son for support, for the reason that he worked himself and earned wages and had other children working, but he was partially dependent and the question is, what amount should be paid the father as a partial dependent, under the Workmen's Compensation Act, the son earning \$5.67 a week and paying all of it to the father? In other words, is the father entitled to the minimum of \$4 a week, or should there be a deduction from the minimum amount, on account of the fact that the employee, while contributing all of his earnings to his father, was supported by the father, and his maintenance was at least \$2.50 a week?

*Held*, that the employee contributed his entire earnings to the dependent, the proportion contributed being 100 per cent., and that there is due the said dependent 100 per cent. of the minimum compensation provided by the statute, that is, the payment of \$4 a week for three hundred weeks from the date of the injury.

Appealed to Supreme Judicial Court.

*Agreed Statement of Facts and Questions raised thereon for Decision by the Industrial Accident Board.*

Walter Murphy, a minor, fifteen years of age, was employed in the card room of the Bigelow Carpet Company on or about Sept. 20, 1912, and on that date, while taking some waste from a machine, his hand was caught and badly lacerated, this happening in the course of and arising out of his employment, and as a result of said injury death ensued on Sept. 26, 1912.

At the time of the injury the average weekly wages of the deceased were \$5.67, all of which he turned in to his father, Daniel Murphy. There is no claim that either the employee or employer was guilty of serious and willful misconduct.

Daniel Murphy resides in the town of Lancaster. At the time of the injury his family consisted of his wife and nine minor children. Of these children three were at work and earning, in the aggregate, \$21.67 per week, which was turned over to the father. Daniel Murphy himself was employed in a foundry in Clinton and earned in the neighborhood of \$10.50 each week. He maintained the deceased, furnishing him board, lodging and clothing, which cost at least \$2.50 per week. The above was the entire income of the family and was all needed and used for their support, there being no surplus remaining.

On the foregoing facts the parties are agreed. They also agree that Daniel Murphy's claim comes under section 6, Part II. of the Workmen's Compensation Act. -

The question on which the parties cannot agree is whether Daniel Murphy is entitled to \$4 a week minimum compensation or some fraction thereof. The insurance company claims that in determining the amount of compensation the fact should be considered that the father paid the expense of the son's maintenance to the extent at least of \$2.50 per week, and therefore could not have been dependent to the full extent on the earnings of the son.

The claimant maintains that this cost of maintenance should not be deducted from the earnings of the deceased in arriving at the amount contributed by him to the claimant weekly, in calculating the extent of the partial dependency.

AMERICAN MUTUAL LIABILITY INSURANCE COMPANY,  
CHARLES E. HODGES,  
DANIEL MURPHY,  
By GEORGE E. O'TOOLE.

*Findings and Decision of the Industrial Accident Board.*

According to the annexed agreed statement of facts, Walter Murphy, who was insured under the Workmen's Compensation Act, while in the employ of the Bigelow Carpet Company, on or about Sept. 20, 1912, met with a personal injury from which he died on the 26th of September, 1912. The injury arose out of and in the course of his employment. At the time of his death he was a minor, fifteen years of age, and lived at home

with his father, Daniel Murphy, to whom he contributed all of his wages, amounting to \$5.67 a week. The father was not wholly dependent upon the wages of the son Walter for support, for the reason that he worked himself and earned wages and had other children working, but he was partially dependent, and the question is, what amount should be paid the father as a partial dependent, under the Workmen's Compensation Act, the son earning \$5.67 a week and paying all of it to the father. In other words, is the father entitled to the minimum of \$4 a week, or should there be a deduction from the minimum amount, on account of the fact that the boy Walter, while contributing all of his earnings to his father, was supported by the father, and his maintenance was at least \$2.50 a week?

The Industrial Accident Board finds that inasmuch as the sum contributed by the son Walter to his father was the entire weekly wage of the son, and not a fractional part thereof, the father is entitled, as such partial dependent, to the full minimum weekly compensation of \$4 a week, and not to a fractional part of \$4 a week. The Workmen's Compensation Act, section 6, Part II., provides that if the employee leaves dependents only partly dependent upon his earnings for support, there shall be paid such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. There is no provision in the act which provides for any deduction from an employee's wages when the employee contributes to the dependent all of his wages. The section above referred to provides for a case where only part of the employee's earnings are contributed to the dependent, and the statute gives no rule by which to measure the extent of the compensation due the partial dependent when the employee contributes all of his earnings, leaving it fair to assume that it was the intention of the Legislature in such a case that the rule provided should be adopted; that one-half of the wages of the employee should go to the dependent, which never should be less than the minimum of \$4 per week. Notwithstanding the English case of *Tamworth Colliery Co., Ltd., v. Hall*, 4, B. W. C. 313, in which it was held that the cost

of the maintenance of the son and the value to the father of the son's services in the barber business should be taken into account in estimating the amount of compensation belonging to the dependent under the act, we find that there is no provision in our statute for any such deduction. The statute explicitly states that the dependent is entitled to the same proportion of the weekly payments as the amount contributed bears to the annual earnings. Had the amount contributed been \$4 instead of \$5.67, the claimant would have been entitled, under section 6, Part II., to four hundred-fifty hundred sixty-sevenths of the minimum of \$4, that is, to the payment of \$2.82 a week for the statutory period. We therefore find that the deceased employee, Walter Murphy, contributed his entire earnings to the dependent Daniel Murphy, the proportion contributed being 100 per cent., and that there is due the said dependent from the insurer 100 per cent. of the minimum compensation provided by the statute, that is, the payment of \$4 a week for three hundred weeks from Sept. 20, 1912, the date of the injury.

JAMES B. CARROLL.

DUDLEY M. HOLMAN.

DAVID T. DICKINSON.

EDWARD F. MCSWEENEY.

JOSEPH A. PARKS.

JUNE 13, 1913.

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IDA S. NICHOLS, ADMINISTRATRIX OF THE ESTATE OF CHARLES NICHOLS, *Employee*.

WEBBER BROTHERS SHOE COMPANY, *Employer*.

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer*.

MAY ADDITIONAL COMPENSATION, PAID BEFORE DEATH ON ACCOUNT OF CERTAIN SPECIFIED INJURIES, BE DEDUCTED FROM COMPENSATION DUE THE WIDOW? INDUSTRIAL ACCIDENT BOARD RULES THAT NO DEDUCTIONS MAY BE MADE.

The employee received an injury which necessitated the amputation of the third finger of the right hand. Later, blood poisoning set in and death ensued. Under section 11 (d), Part II., the employee was entitled to the payment of

half his average weekly wages for a period of twelve weeks, in *addition* to the payments due on account of incapacity for work, the amputation of the finger being one of the "specified injuries" for which the specified compensation named should be paid "in addition to all other compensation." Subsequent to the payment of the "additional compensation" the employee died, and the insurer requested the Board to rule as to whether the amount paid as "additional compensation" should not be properly deducted from the compensation due the widow.

*Decision.* — The Industrial Accident Board ruled that the statute makes it obligatory upon the insurer to pay the *additional compensation*, and that no provision is made for its deduction if death results from the injury.

Appealed to Supreme Judicial Court.

### *Agreed Statement of Facts.*

This accident occurred Jan. 17, 1913. The injury was blood poisoning, necessitating the amputation of the third finger of the right hand at the middle of the metacarpal bone. Death finally resulted, on April 2, 1913. Deceased was earning \$8.50 per week; entitled to compensation at the rate of \$4.25 per week. He had received during his lifetime twelve weeks of compensation at \$4.25 per week. The question to be determined: "Is insurance company entitled to deduct the twelve weeks' compensation paid him during his lifetime out of three hundred weeks due him for the death?"

IDA S. NICHOLS,  
*Administratrix.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD.,  
H. S. AVERY, *Attorney.*

### *Findings and Decision of the Industrial Accident Board.*

The above case was submitted to the Industrial Accident Board, on Wednesday, June 18, 1913, upon the foregoing agreed statement of facts, the question involved being whether the insurer had the right, under the Workmen's Compensation Act, to deduct from the compensation due the widow as the sole dependent of the employee the additional payments made during the first twelve weeks after his injury, and prior to his death, for the loss by severance of the third finger of the right hand at the middle of the metacarpal bone, as provided by section 11 (d), Part II. of the statute.

The Board rules, following the English case of *Williams v.*

Vauxhall Colliery Company, Limited, 9 M-S 120, that the dependents have a separate and independent right in the event of the employee's death, and that the additional compensation paid under these circumstances cannot be deducted, the said section 11, Part II., providing that "in case of the following specified injuries, the amounts hereinafter named shall be paid in addition to all other compensation," the words "in addition to all other compensation" making it obligatory upon the insurer to pay this additional compensation, and no provision is made for its deduction if death results from the injury.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
DAVID T. DICKINSON.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.

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EMILY SUNDINE, *Employee.*

F. L. DUNNE & Co., *Employer.*

LONDON GUARANTEE AND ACCIDENT COMPANY, LTD., *Insurer.*

EMPLOYEE RECEIVES INJURY WHILE DESCENDING STAIRS WHICH  
WERE THE ONLY MEANS OF INGRESS AND EGRESS. EN-  
TITLED TO COMPENSATION.

The employee was injured while going down a flight of stairs leading from the third floor to the second floor of the building in which she was employed. There was no other way by which she could go to the street except down the stairway on which she was injured. She was on her way to luncheon when the injury occurred.

*Held*, that it was a necessary incident of her employment to use the flight of stairs upon which the injury occurred, and that said injury arose out of and in the course of her employment.

Appealed to the Supreme Judicial Court.

*Agreed Statement of Facts.*

Said Sundine was injured Nov. 29, 1912, while coming down a flight of stairs leading from the third floor to the second floor of the building numbered 376 Washington Street, Boston. She was coming from the workroom of the F. L. Dunne & Co., on the fourth floor of said building, at about 12 o'clock noon.

At the time of the accident she was on her way out to luncheon, and was descending to the street, accompanied by another woman.

She fell from the second or third step from the top of said flight of stairs to the bottom, and sprained her right ankle as a result of the fall. Said stairs were of wooden construction, and the treads of said stairs were somewhat worn. There was no artificial light or lamp to light these stairs, and the upper part of the flight was dark.

This was the only flight of stairs by which the petitioner could reach or leave the said workroom; there was no elevator for her to use, and it was necessary for her to use this flight of stairs in making her ingress and egress. The plaintiff claims that the accident was due to the insufficient lighting of these stairs, and also to the fact that the same were worn down, causing her to fall.

F. L. Dunne & Co. are covered by insurance under the Workmen's Compensation Act by the London Guarantee and Accident Company, Ltd., Edward Olson not being covered by insurance under said act.

The F. L. Dunne & Co., on the day of the accident, were the lessees of the workroom in which the plaintiff worked on the fourth floor, they being sub-lessees from A. H. Howe & Sons, who were the lessees of the whole building.

The workroom was used exclusively for making clothing for the F. L. Dunne & Co., who let out their work to different men, who were paid a stipulated price per garment, said F. L. Dunne & Co. furnishing the goods.

One of the men who made clothing for said F. L. Dunne & Co. in this room was Edward Olsen, and said Olsen paid the petitioner her weekly wages of \$12 for assisting him in making clothing for said F. L. Dunne & Co.

The plaintiff was out of work from Nov. 29, 1912, to Feb. 24, 1913, which latter date was the earliest date at which she was able to go to work. The attending physician's bill for the first two weeks services was \$24.

The above-agreed statement of facts is respectfully submitted to the commissioners that a decision may be had whether the case is covered by the Workmen's Compensation



Act. A copy of the lease under which F. L. Dunne & Co. occupied said premises is annexed and may be referred to.

RICHARD J. LANE,  
*Attorney for Emily Sundine.*

H. S. AVERY,  
*Attorney for London Guarantee and Accident Company, Ltd.*

*Lease.*

*This indenture, made the seventh day of August in the year nineteen hundred and eleven between Alfred H. Howe, Irving B. Howe and E. Warner Howe, co-partners doing business in Boston under the firm name and style of A. H. Howe & Sons, (hereinafter called the Lessor) of the one part and Frank L. Dunne, Thomas Jackson and Charles J. Erickson, all of Boston in the County of Suffolk, co-partners under the style of F. L. Dunne & Co. (hereinafter called the Lessees) of the other part, witnesseth, That in consideration of the rent and covenants herein reserved and contained on the part of the Lessees and their heirs, executors, administrators and assigns, to be paid, performed and observed, the Lessor do hereby demise and lease unto the Lessees the fourth floor of the building numbered 376 Washington Street, Corner of Franklin Street in said Boston. In addition to the covenants hereinafter contained, the lessees covenant and agree that at any time hereafter during the term of this lease, the lessors and their agents or servants may enter said leased premises and install a passenger elevator, and for said purpose may take possession of such part of said leased premises as may be necessary, and make any reasonably necessary alterations or changes in said premises; and the lessees further covenant and agree to hold and save harmless the lessors from any damage resulting in any way from the installation of said elevator. In case said elevator is installed as aforesaid, the lessees further covenant and agree to pay to the lessors \$100 per year for the use of said elevator in addition to the rent hereinafter named, said payment to be made by equal monthly payments of \$8.33 each month payable at the time said rent becomes due. To have and to hold the premises hereby demised unto the Lessees, their executors, administrators and assigns, for the term of three (3) years from January 1st, 1912. Yielding and paying therefor the yearly rent of One thousand (\$1,000) dollars, during the said term by equal monthly payments of Eighty-three and <sup>33</sup>/<sub>100</sub> (\$83.33) dollars on the first day of each and every month for the month ending with the day prior to the first monthly payment to be made on the                    day of month next, and also at the legal determination of this lease a proportionate part of the said rent for any part of a                    then unexpired. And the Lessees do hereby for themselves*

and their heirs, executors, administrators and assigns both individually and as a firm, covenant with the Lessors, their heirs and assigns, that the Lessees, their executors, administrators, or assigns, during the said term and for such further time as            they or any other person or persons claiming under them shall hold the said premises or any part thereof, will pay unto the Lessors, their heirs or assigns, the said rent at the times and in the manner aforesaid, and will keep all and singular the said premises in such repair, order and condition as the same are in at the commencement of the said term, or may be put in during the continuance thereof, damage by fire or other unavoidable casualty only excepted; and will save the Lessors, their heirs and assigns harmless from all loss and damage occasioned by the use or escape of water upon the said premises, or by the bursting of the pipes, or by any nuisance made or suffered on the premises; and will not assign this lease nor underlet the whole or any part of the said premises without first obtaining on each occasion the consent in writing of the Lessors, their heirs and assigns; and will not permit any hole to be drilled or made in the stone or brickwork of the said building, or any placard or sign to be placed upon the building, except such and in such place and manner as shall have been first approved in writing by the Lessors, their heirs or assigns; and will keep good with glass of the same kind and quality as that which may be injured or broken, all the glass now or hereafter in the premises, unless the same shall be broken by fire, acknowledging that the same is now whole and in good order; and at the expiration of the said term will remove their goods and effects, and those of all persons claiming under them, and will peaceably yield up to the Lessors, their heirs or assigns, the said premises, and all erections and additions made to or upon the same, in good repair order and condition in all respects, damage by fire or other unavoidable casualty excepted; and that during the said term, and such further time as aforesaid, the said premises shall not be overloaded, damaged or defaced; and no trade or occupation shall be carried on upon the said premises, or use made thereof which shall be unlawful, improper, noisy, or offensive, or contrary to any law of the Commonwealth or ordinance or by-law of the City of Boston for the time being in force, or injurious to any person or property; and no act or thing shall be done upon the said premises, which may make void or voidable any insurance of the said premises or building against fire, or may render any increased or extra premium payable for any such insurance; and no addition or alteration to or upon the said premises shall be made without the consent of the lessors, their heirs or assigns; and all property of any kind that may be on the premises shall be at the sole risk of the Lessee, or those claiming through or under them, and the Lessors, their heirs or assigns shall not be liable to the Lessee or any other person for any injury, loss or damage to any person or property on the premises; and that the Lessors, their heirs or assigns or their agents may during the said term, at seasonable times, enter to view the

said premises and may remove placards and signs not approved and affixed as herein provided, and may make repairs and alterations if they should elect so to do, and may show the said premises and building to others, and at any time within three months next before the expiration of the said term may affix to any suitable part of the said premises a notice for letting or selling the said premises, or building, and keep the same so affixed without hindrance or molestation. *Provided always*, that in case the said premises, or any part thereof, or the whole or any part of the building of which they are a part, shall be taken for any street or other public use, or shall be destroyed or damaged by fire or other unavoidable casualty, or by the action of the City or other authorities after the execution hereof and before the expiration of the said term, then this lease and the said term shall terminate at the election of the Lessors, or their heirs or assigns, and such election may be made in case of any such taking notwithstanding the entire interest of the Lessors, or their heirs or assigns may have been divested by such taking; and if they shall not so elect, then in case of any such taking or destruction of or any damage to the demised premises, a just proportion of the rent thereinbefore reserved, according to the nature and extent of the injury sustained by the demised premises, shall be suspended or abated until the demised premises, or in case of such taking, what may remain thereof, shall have been put in proper condition for use and occupation.

*Provided also*, and these presents are upon this condition, that if the Lessees or their executors, administrators or assigns do or shall neglect or fail to perform or observe any of the covenants contained in these presents, and on their part to be performed or observed; or if the estate hereby created shall be taken on execution, or by other process of law, or if the Lessees or their executors, administrators, or assigns shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of their property for the benefit of creditors, then and in any of the said cases, (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance) the Lessors, or their heirs or assigns, lawfully may, immediately, or at any time thereafter, and without demand or notice, enter into and upon the said premises or any part thereof in the name of the whole, and repossess the same as of their former estate, and expel the Lessees and those claiming through or under them and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon entry as aforesaid this lease shall determine; and the Lessee covenant that in case of such termination they will indemnify the Lessors, their heirs and assigns, against all loss of rent and other payments which they may incur by reason of such termination during the residue of the time first above specified for the duration of the said term.

*In witness whereof*, the said parties have hereunto set their hands and seals, the day and year first above written.

ALFRED H. HOWE      L. S.  
 IRVING H. HOWE.  
 E. WARNER HOWE.  
 F. L. DUNNE & Co.    L. S.  
 E. J. ERICKSON.  
 THOMAS JACKSON.

*Finding and Decision of the Industrial Accident Board on  
 Agreed Statement of Facts.*

This case came before the Industrial Accident Board on the agreed statement of facts hereto annexed, on Thursday, Oct. 2, 1913.

Emily Sundine was injured on Nov. 29, 1912, while coming down a flight of stairs leading from the third floor to the second floor of the building numbered 376 Washington Street, Boston. The workroom in which she was employed was on the fourth floor of said building, and there was no other way by which she could go to the street except down the stairway on which she was injured. She was on her way to her luncheon when the accident happened.

F. L. Dunne & Co. are merchant tailors, and Edward Olsen was one of the men who made clothing for said F. L. Dunne & Co., in the workshop of F. L. Dunne & Co., and Emily Sundine was employed by Olsen.

We find that it was a necessary incident of her employment to use the flight of stairs upon which she was when she was injured, and, therefore, rule that the injury arose out of and in the course of her employment. (Olsen *v.* Andrews, 168 Mass. 261; Kilduff, Admr., *v.* Boston Elevated Railway Co., 195 Mass. 307; Lowry *v.* Sheffield Coal Company, 24 T. L. R. 142-1 B. W. C. C. 1; Sharp *v.* Johnson, 2 K. B. 139-74 L. J. K. B. 566.-7 M-S. 28.)

It also appears from the statement of facts that Olsen, for whom the employee was working, was a contractor for F. L. Dunne & Co. within the meaning of section 7, Part III. of the Workmen's Compensation Act, and we rule that she is entitled to compensation.

It was agreed that her average weekly wages were \$12.

We therefore find that she is entitled to compensation at the rate of \$6 a week from the fifteenth day after her injury, to wit, from Dec. 13, 1912, to the twenty-third day of February, 1913, inclusive, amounting in all to \$62.57, together with her physician's bill for medical services for the first two weeks after the injury, which it was agreed was \$24, amounting in all to \$86.57.

JAMES B. CARROLL.  
DUDLEY M. HOLMAN.  
EDW. F. MCSWEENEY.  
JOSEPH A. PARKS.



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## APPENDIX.

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# The Commonwealth of Massachusetts.

## THE WORKMEN'S COMPENSATION ACT.

CHAPTER 751, ACTS OF 1911, AS AMENDED BY CHAPTERS 172 AND 571,  
ACTS OF 1912.

AN ACT RELATIVE TO PAYMENTS TO EMPLOYEES FOR PERSONAL  
INJURIES RECEIVED IN THE COURSE OF THEIR EMPLOYMENT  
AND TO THE PREVENTION OF SUCH INJURIES.

*Be it enacted, etc., as follows:*

### PART I.

#### MODIFICATION OF REMEDIES.

Defenses  
removed

SECTION 1. In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employee was negligent;
2. That the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed the risk of the injury.

Non-  
application.

SECTION 2. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by domestic servants and farm laborers.

SECTION 3. The provisions of section one shall not apply to actions to recover damages for personal injuries sustained by employees of a subscriber.

SECTION 4. The provisions of sections one hundred and twenty-seven to one hundred and thirty-five, inclusive, and of one hundred and forty-one to one hundred and forty-three, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine, and of any acts in amendment thereof, shall not apply to employees of a subscriber while this act is in effect.

Waiver by  
employee, of  
right at com-  
mon law.

Manner of  
giving notices,  
see page 516.

SECTION 5. An employee of a subscriber shall be held to have waived his right of action at common law to recover damages for personal injuries if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed such right, or if the contract of hire was made before the employer became a subscriber, if the employee shall not have given the said notice within thirty days of notice of such subscription. An employee who has given notice to his employer that he claimed his right of action at common law may waive such claim by a notice in writing which shall take effect five days after it is delivered to the employer or his agent. [See chapter 666, Acts of 1912.]



## PART II.

## PAYMENTS.

SECTION 1. If an employee who has not given notice of his claim of common law rights of action, as provided in Part I, section five, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, he shall be paid compensation by the association, as hereinafter provided, if his employer is a subscriber at the time of the injury.

Compensation  
of employee.

SECTION 2. If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

No compensa-  
tion, when.

SECTION 3 [as amended by section 1 of chapter 571, Acts of 1912]. If the employee is injured by reason of the serious and wilful misconduct of a subscriber or of any person regularly entrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In such case the subscriber shall repay to the association the extra compensation paid to the employee. If a claim is made under this section the subscriber shall be allowed to appear and defend against such claim only.

Double  
compensation.

SECTION 4. No compensation shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but if incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

When  
compensation  
begins.

SECTION 5. During the first two weeks after the injury, the association shall furnish reasonable medical and hospital services, and medicines when they are needed.

Medical and  
hospital  
services.

SECTION 6. If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one half his average weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury.

In case of  
fatal injury.

SECTION 7. The following persons shall be conclusively pre-

Dependency.

sumed to be wholly dependent for support upon a deceased employee:—

(a) A wife upon a husband with whom she lives at the time of his death.

(b) A husband upon a wife with whom he lives at the time of her death.

(c) A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them.

In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury; and in such other cases, if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof; if there is no one wholly dependent and more than one person partly dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Expense of  
burial, etc., if  
no dependents.

SECTION 8. If the employee leaves no dependents, the association shall pay the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Total  
incapacity.

SECTION 9. While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to one half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks, nor the amount more than three thousand dollars.

Partial  
incapacity.

SECTION 10. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to one half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Specified  
injuries, addi-  
tional compen-  
sation for.

SECTION 11 [as amended by section 2, chapter 571, Acts of 1912, and section 1, chapter 696, Acts of 1913]. In case of the following specified injuries the amounts hereinafter named shall be paid in addition to all other compensation:

(a) For the loss by severance of both hands at or above the wrist, or both feet at or above the ankle, or the loss of one hand and one foot, or the reduction to one tenth of normal vision in both eyes with glasses, one half of the average weekly

wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of one hundred weeks.

(b) For the loss by severance of either hand at or above the wrist, or either foot at or above the ankle, or the reduction to one tenth of normal vision in either eye with glasses, one half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of fifty weeks.

(c) For the loss by severance at or above the second joint of two or more fingers, including thumbs, or toes, one half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twenty-five weeks.

(d) For the loss by severance of at least one phalange of a finger, thumb, or toe, one half the average weekly wages of the injured person, but not more than ten dollars nor less than four dollars a week, for a period of twelve weeks.

(e) The additional amounts provided for in this section in case of the loss of a hand, foot, thumb, finger or toe shall also be paid for the number of weeks above specified, in case the injury is such that the hand, foot, thumb, finger or toe is not lost but is so injured as to be permanently incapable of use.

SECTION 12. No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the association be considered in fixing the compensation under this act.

Savings not to be considered.

SECTION 13. The compensation payable under this act in case of the death of the injured employee shall be paid to his legal representative; or, if he has no legal representative, to his dependents; or, if he leaves no dependents, to the persons to whom payment of the expenses for the last sickness and burial are due. If the payment is made to the legal representative of the deceased employee, it shall be paid by him to the dependents or other persons entitled thereto under this act.

To whom payable, in case of death.

SECTION 14. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may in his behalf claim and exercise such right or privilege.

Guardian, minor, etc.

SECTION 15. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the injury shall have been given to the association or subscriber as soon as practicable after the happening thereof, and unless the claim for compensation with respect to such injury shall have been made within six months after the occurrence of the same; or, in case of the death of the employee, or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity.

Notice of injury.

Form of  
notice.

SECTION 16 [as amended by chapter 172, Acts of 1912, and section 3 of chapter 571, Acts of 1912]. The said notice shall be in writing, and shall state in ordinary language the time, place and cause of the injury, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf. Any form of written communication signed by any person who may give the notice as above provided, which contains the information that the person has been so injured, giving the time, place and cause of the injury, shall be considered a sufficient notice.

Service of  
notice.

SECTION 17. The notice shall be served upon the association, or an officer or agent thereof, or upon the subscriber, or upon one subscriber, if there are more subscribers than one, or upon any officer or agent of a corporation if the subscriber is a corporation, by delivering the same to the person on whom it is to be served, or leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business.

Inaccuracy.

SECTION 18. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead and the association was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the association, subscriber, or agent had knowledge of the injury.

Medical  
examination,  
if requested by  
association, etc.

SECTION 19 [as amended by section 4 of chapter 571, Acts of 1912]. After an employee has received an injury, and from time to time thereafter during the continuance of his disability he shall, if so requested by the association or subscriber, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the commonwealth, furnished and paid for by the association or subscriber. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended, and his compensation during the period of suspension may be forfeited.

No agreement  
to waive com-  
pensation valid.

SECTION 20. No agreement by an employee to waive his rights to compensation under this act shall be valid.

No payment  
assignable, etc.

SECTION 21. No payment under this act shall be assignable or subject to attachment, or be liable in any way for any debts.

Lump sum  
payment.

SECTION 22. Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by

agreement of the parties, subject to the approval of the industrial accident board.

SECTION 23 [as amended by section 5 of chapter 571, Acts of 1912]. The claim for compensation shall be in writing and shall state the time, place, cause and nature of the injury; it shall be signed by the person injured or by a person in his behalf, or, in the event of his death, by his legal representative or by a person in his behalf, or by a person to whom payments may be due under this act or by a person in his behalf, and shall be filed with the industrial accident board. The failure to make a claim within the period prescribed by section fifteen shall not be a bar to the maintenance of proceedings under this act if it is found that it was occasioned by mistake or other reasonable cause.

Claim for compensation.

### PART III.

#### PROCEDURE.

SECTION 1 [as amended by section 6 of chapter 571, Acts of 1912]. There shall be an industrial accident board consisting of five members, to be appointed by the governor, by and with the advice and consent of the council, one of whom shall be designated by the governor as chairman. The term of office of members of this board shall be five years, except that when first constituted one member shall be appointed for one year, one for two years, one for three years, one for four years, and one for five years. Thereafter one member shall be appointed every year for the full term of five years.

Industrial accident board.

SECTION 2 [as amended by section 7 of chapter 571, Acts of 1912]. The salaries and expenses of the board shall be paid by the commonwealth. The salary of the chairman shall be five thousand dollars a year, and the salary of the other members shall be forty-five hundred dollars a year each. The board may appoint a secretary at a salary of not more than three thousand dollars a year, and may remove him. It shall also be allowed an annual sum, not exceeding ten thousand dollars, for clerical service, and travelling and other necessary expenses. The board shall be provided with an office in the state house or in some other suitable building in the city of Boston, in which its records shall be kept.

Salaries, expenses, etc.

SECTION 3 [as amended by section 8 of chapter 571, Acts of 1912]. The board may make rules not inconsistent with this act for carrying out the provisions of the act. Process and procedure under this act shall be as summary as reasonably may be. The board or any member thereof shall have the power to subpoena witnesses, administer oaths, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. The fees for attending as a wit-

Rules of board.

Witnesses, etc.

ness before the industrial accident board shall be one dollar and fifty cents a day, for attending before an arbitration committee fifty cents a day; in both cases five cents a mile for travel out and home.

Superior court to enforce provisions relating to witnesses.

The superior court shall have power to enforce by proper proceedings the provisions of this section relating to the attendance and testimony of witnesses and the examination of books and records.

Agreements regarding compensation; memorandum to be filed; how enforceable.

SECTION 4 [as amended by section 9 of chapter 571, Acts of 1912]. If the association and the injured employee reach an agreement in regard to compensation under this act, a memorandum of the agreement shall be filed with the industrial accident board and, if approved by it, thereupon the memorandum shall for all purposes be enforceable under the provisions of Part III, section eleven. Such agreements shall be approved by said board only when the terms conform to the provisions of this act.

Arbitration if no agreement.

SECTION 5 [as amended by section 10 of chapter 571, Acts of 1912]. If the association and the injured employee fail to reach an agreement in regard to compensation under this act, either party may notify the industrial accident board who shall thereupon call for the formation of a committee of arbitration. The committee of arbitration shall consist of three members, one of whom shall be a member of the industrial accident board, and shall act as chairman. The other two members shall be named, respectively, by the two parties. If the subscriber has appeared under the provisions of Part II, section three, the member named by the association shall be subject to his approval. If a vacancy occurs it shall be filled by the party whose representative is unable to act.

Oath of arbitrators.

The arbitrators appointed by the parties shall be sworn by the chairman as follows: I do solemnly swear that I will faithfully perform my duty as arbitrator and will not be influenced in my decision by any feeling of friendship or partiality toward either party. So help me God.

Appointment of arbitrators.

SECTION 6 [as amended by section 11 of chapter 571, Acts of 1912]. It shall be the duty of the industrial accident board, upon notification that the parties have failed to reach an agreement, to request both parties to appoint their respective representatives on the committee of arbitration. The board shall designate one of its members to act as chairman, and, if either party does not appoint its member on this committee within seven days after notification, as above provided, or after a vacancy has occurred, the board or any member thereof shall fill the vacancy and notify the parties to that effect.

Hearings, etc., by arbitrators.

SECTION 7 [as amended by section 12 of chapter 571, Acts of 1912]. The committee on arbitration shall make such inquiries and investigations as it shall deem necessary. The hearings

of the committee shall be held in the city or town where the injury occurred, and the decision of the committee, together with a statement of the evidence submitted before it, its findings of fact, rulings of law and any other matters pertinent to questions arising before it shall be filed with the industrial accident board. Unless a claim for a review is filed by either party within seven days, the decision shall be enforceable under the provisions of Part III, section eleven.

SECTION 8. The industrial accident board or any member thereof may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be five dollars and travelling expenses, but the board may allow additional reasonable amounts in extraordinary cases.

Examination  
of employee  
by physician  
for board.

SECTION 9. The arbitrators named by or for the parties to the dispute shall each receive five dollars as a fee for his services, but the industrial accident board or any member thereof may allow additional reasonable amounts in extraordinary cases. The fees shall be paid by the association, which shall deduct an amount equal to one third of the sum from any compensation found due the employee.

Fees of  
arbitrators.

SECTION 10 [as amended by section 13 of chapter 571, Acts of 1912]. If a claim for a review is filed, as provided in Part III, section seven, the board shall hear the parties and may hear evidence in regard to any or all matters pertinent thereto and may revise the decision of the committee in whole or in part, or may refer the matter back to the committee for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties thereof. No party shall as a matter of right be entitled to a second hearing upon any question of fact.

Review of  
arbitration by  
board.

SECTION 11 [as amended by section 14 of chapter 571, Acts of 1912]. Any party in interest may present certified copies of an order or decision of the board, a decision of an arbitration committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the board, and all papers in connection therewith, to the superior court for the county in which the injury occurred or for the county of Suffolk, whereupon said court shall render a decree in accordance therewith and notify the parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit duly heard and determined by said court, except that there shall be no appeal therefrom upon questions of fact, or where the decree is based upon a decision of an arbitration committee or a memorandum of agreement, and that there shall be no appeal from a decree based upon an order or decision of the board which has not been presented to the court within ten

Court decrees  
and appeals.

days after the notice of the filing thereof by the board. Upon the presentation to it of a certified copy of a decision of the industrial accident board ending, diminishing or increasing a weekly payment under the provisions of Part III, section twelve, the court shall revoke or modify the decree to conform to such decision.

Review of  
payments by  
board.

SECTION 12. Any weekly payment under this act may be reviewed by the industrial accident board at the request of the association or of the employee; and on such review it may be ended, diminished or increased, subject to the maximum and minimum amounts above provided, if the board finds that the condition of the employee warrants such action.

Fees subject to  
board's  
approval.

SECTION 13. Fees of attorneys and physicians for services under this act shall be subject to the approval of the industrial accident board.

Assessment of  
costs.

SECTION 14. If the committee of arbitration, industrial accident board, or any court before whom any proceedings are brought under this act determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, it shall assess the whole cost of the proceedings upon the party who has so brought, prosecuted or defended them.

Optional  
procedure.

SECTION 15 [as amended by section 1, chapter 448, Acts of 1913]. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employee may at his option proceed either at law against that person to recover damages, or against the association for compensation under this act, but not against both; and if compensation be paid under this act, the association may enforce in the name of the employee, or in its own name and for its own benefit, the liability of such other person, and in case the association recovers a sum greater than that paid by the association to the employee four fifths of the excess shall be paid over to the employee.

Questions  
determined by  
board, etc.

SECTION 16 [as amended by section 15 of chapter 571, Acts of 1912]. All questions arising under this act, if not settled by agreement by the parties interested therein, shall, except as otherwise herein provided, be determined by the industrial accident board. The decisions of the industrial accident board shall for all purposes be enforceable under the provisions of Part III, section eleven.

Employees of  
independent  
contractor, etc.

SECTION 17. If a subscriber enters into a contract, written or oral, with an independent contractor to do such subscriber's work, or if such a contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contract with the subscriber, and the association would, if such work were executed by employees immediately employed by the subscriber, be liable to pay compensation under this act to



those employees, the association shall pay to such employees any compensation which would be payable to them under this act if the independent or sub-contractors were subscribers. The association, however, shall be entitled to recover indemnity from any other person who would have been liable to such employees independently of this section, and if the association has paid compensation under the terms of this section, it may enforce in the name of the employee, or in its own name and for the benefit of the association, the liability of such other person. This section shall not apply to any contract of an independent or sub-contractor which is merely ancillary and incidental to, and is no part of or process in, the trade or business carried on by the subscriber, nor to any case where the injury occurred elsewhere than on, in, or about the premises on which the contractor has undertaken to execute the work for the subscriber or which are under the control or management of the subscriber.

SECTION 18 [as amended by section 1, chapter 746, Acts of 1913]. Every employer shall hereafter keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within forty-eight hours, not counting Sundays and legal holidays, after the occurrence of an injury, a report thereof shall be made in writing to the industrial accident board on blanks to be procured from the board for the purpose. Upon the termination of the disability of the injured employee, the employer shall make a supplemental report upon blanks to be procured from the board for that purpose. If the disability extends beyond a period of sixty days, the employer shall report to the board at the end of such period that the injured employee is still disabled, and upon the termination of the disability shall file a final supplemental report as provided above.

Employers to  
report all  
injuries.

Supplemental  
report.

The said reports shall contain the name and nature of the business of the employer, the situation of the establishment, the name, age, sex, and occupation of the injured employee, and shall state the date and hour of any accident causing the injury, the nature and cause of the injury, and such other information as may be required by the board.

Form of report  
of injury.

Any employer who refuses or neglects to make the report required by this section shall be punished by a fine of not more than fifty dollars for each offence.

Penalty.

Copies of all reports of injuries filed by employers with the industrial accident board and all statistics and data compiled therefrom shall be kept available by the said board and shall be furnished on request to the state board of labor and industries for its own use.

Within sixty days after the termination of the disability of the injured employee, the association or other party liable to

pay the compensation provided for by Part II of this act shall file with the board a statement showing the total payments made or to be made for compensation and for medical services for such injured employee.

#### PART IV.

##### THE MASSACHUSETTS EMPLOYEES INSURANCE ASSOCIATION. [SEE CHAPTER 721, ACTS OF 1912.]

Massachusetts  
Employees  
Insurance  
Association.

SECTION 1. The Massachusetts Employees Insurance Association is hereby created a body corporate with the powers provided in this act and with all the general corporate powers incident thereto.

Directors.

SECTION 2. The governor shall appoint a board of directors of the association, consisting of fifteen members, who shall serve for a term of one year, or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide.

Powers of  
directors and  
by-laws.

SECTION 3. Until the first meeting of the subscribers the board of directors shall have and exercise all the powers of the subscribers, and may adopt by-laws not inconsistent with the provisions of this act, which shall be in effect until amended or repealed by the subscribers.

Officers.

SECTION 4. The board of directors shall annually choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officers as the by-laws shall provide.

Quorum and  
vacancies.

SECTION 5. Seven or more of the directors shall constitute a quorum for the transaction of business.

Vacancies in any office may be filled in such manner as the by-laws shall provide.

Any employer  
may become  
subscriber.

SECTION 6. Any employer in the commonwealth may become a subscriber.

First meeting  
of subscribers.

SECTION 7. The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his place of business not less than ten days before the date fixed for the meeting.

Subscribers'  
voting power.

SECTION 8. In any meeting of the subscribers each subscriber shall be entitled to one vote, and if a subscriber has five hundred employees to whom the association is bound to pay compensation he shall be entitled to two votes, and he shall be entitled to one additional vote for each additional five hundred employees to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by the right of proxy, more than twenty votes.

Minimum  
standard.

SECTION 9. No policy shall be issued by the association until not less than one hundred employers have subscribed,

who have not less than ten thousand employees to whom the association may be bound to pay compensation.

SECTION 10. No policy shall be issued until a list of the subscribers, with the number of employees of each, together with such other information as the insurance commissioner may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement by every subscriber that he will take the policies subscribed for by him within thirty days of the granting of a license to the association by the insurance commissioner to issue policies. Other requirements.

SECTION 11. If the number of subscribers falls below one hundred, or the number of employees to whom the association may be bound to pay compensation falls below ten thousand, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than one hundred who have not less than ten thousand employees, said subscriptions to be subject to the provisions contained in the preceding section. When further policies not to be issued.

SECTION 12. Upon the filing of the certificate provided for in the two preceding sections the insurance commissioner shall make such investigation as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. License.

SECTION 13. The board of directors shall distribute the subscribers into groups in accordance with the nature of the business and the degree of the risk of injury. Subscribers to be distributed into groups.

Subscribers within each group shall annually pay in cash, or notes absolutely payable, such premiums as may be required to pay the compensation herein provided for the injuries which may occur in that year.

SECTION 14. The association may in its by-laws and policies fix the contingent mutual liability of the subscribers for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a subscriber shall not be less than an amount equal to and in addition to the cash premium. Contingent liability.

SECTION 15. If the association is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the subscribers liable to assessment therefor in proportion to their several liability. Assessments.

Every subscriber shall pay his proportional part of any assessments which may be laid by the association, in accordance with law and his contract, on account of injuries sustained and expenses incurred while he is a subscriber.

Dividends, etc.

SECTION 16. The board of directors may, from time to time, by vote fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation which may be payable on account of injuries sustained and expenses incurred.

All premiums, assessments, and dividends shall be fixed by and for groups as heretofore provided in accordance with the experience of each group, but all the funds of the association and the contingent liability of all the subscribers shall be available for the payment of any claim against the association.

Approval and withdrawal of approval by insurance commissioner. See page 516.

SECTION 17. Any proposed premium, assessment, dividend or distribution of subscribers shall be filed with the insurance department and shall not take effect until approved by the insurance commissioner after such investigation as he may deem necessary. [See chapter 666, Acts of 1912.]

Rules for the prevention of injuries.

SECTION 18. The board of directors shall make and enforce reasonable rules and regulations for the prevention of injuries on the premises of subscribers, and for this purpose the inspectors of the association shall have free access to all such premises during regular working hours.

Any subscriber or employee aggrieved by any such rule or regulation may petition the industrial accident board for a review, and it may affirm, amend, or annul the rule or regulation.

False oath by officer of association.

SECTION 19. If any officer of the association shall falsely make oath to any certificate required to be filed with the insurance commissioner, he shall be guilty of perjury.

Notice to employees of insurance.

SECTION 20. Every subscriber shall, as soon as he secures a policy, give notice, in writing or print, to all persons under contract of hire with him that he has provided for payment to injured employees by the association.

Further notice.

SECTION 21 [as amended by section 16 of chapter 571, Acts of 1912]. Every subscriber shall give notice in writing or print to every person with whom he is about to enter into a contract of hire that he has provided for payment to injured employees by the association. If an employer ceases to be a subscriber he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract with him. In case of the renewal of the policy no notice shall be required under the provisions of this act. He shall file a copy of said notice with the industrial accident board. The notices required by this and the preceding section may be given in the manner therein provided or in such other manner as may be approved by the industrial accident board.

Subscriber indemnified from actions at law.

SECTION 22. If a subscriber, who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court of law to pay to an employee any damages on account of personal injury sustained by such employee during the period of such subscription, the association

shall pay to the subscriber the full amount of such judgment and the cost assessed therewith, if the subscriber shall have given the association notice in writing of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same.

SECTION 23. The provisions of chapter five hundred and seventy-six of the acts of the year nineteen hundred and seven and of acts in amendment thereof shall apply to the association, so far as such provisions are pertinent and not in conflict with the provisions of this act, except that the corporate powers shall not expire because of failure to issue policies or make insurance. Application of regular insurance laws.

SECTION 24. The board of directors appointed by the governor under the provisions of Part IV, section two, may incur such expenses in the performance of its duties as shall be approved by the governor and council. Such expenses shall be paid from the treasury of the commonwealth and shall not exceed in amount the sum of fifteen thousand dollars. Expenses of directors.

## PART V.

### MISCELLANEOUS PROVISIONS.

SECTION 1. If an employee of a subscriber files any claim with or accepts any payment from the association on account of personal injury, or makes any agreement, or submits any question to arbitration, under this act, such action shall constitute a release to the subscriber of all claims or demands at law, if any, arising from the injury. Release of subscriber from claims at law.

SECTION 2 [as amended by section 1, chapter 568, Acts of 1913]. The following words and phrases, as used in this act, shall, unless a different meaning is plainly required by the context, have the following meaning:— Definitions.

"Employer" shall include the legal representative of a deceased employer. "Employer."

"Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except masters of and seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable. "Employee."

"Dependents" shall mean members of the employee's family or next of kin who were wholly or partly dependent upon the earnings of the employee for support at the time of the injury. "Dependents."

"Average weekly wages."

"Average weekly wages" shall mean the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period then the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where, by reason of the shortness of the time during which the employee has been in the employment of his employer, or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed at the same work by the same employer; or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

"Association."

"Association" shall mean the Massachusetts Employees Insurance Association.

"Subscriber."

"Subscriber" shall mean an employer who has become a member of the association by paying a year's premium in advance and receiving the receipt of the association therefor, provided that the association holds a license issued by the insurance commissioner as provided in Part IV, section twelve.

Rights of any liability company under act same as association.

SECTION 3 [as amended by section 17 of chapter 571, Acts of 1912]. Any liability insurance company authorized to do business within this commonwealth shall have the same right as the association to insure the liability to pay the compensation provided for by Part II of this act, and when such liability company issues a policy conditioned to pay such compensation the holder of such policy shall be regarded as a subscriber so far as applicable within the meaning of this act, and when any such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, III and V and of section twenty-two of Part IV of this act, and shall file with the insurance department its classifications of risks and premiums relating thereto and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply.

Repeal.

SECTION 4 [as amended by section 18 of chapter 571, Acts of 1912]. Sections one hundred and thirty-six to one hundred and thirty-nine, inclusive, of chapter five hundred and fourteen of the acts of the year nineteen hundred and nine are hereby repealed.

Not retro-active.

SECTION 5. The provisions of this act shall not apply to injuries sustained prior to the taking effect thereof.

SECTION 6 [as amended by section 19 of chapter 571, Acts of 1912]. Part IV of this act shall take effect on the first day of January, nineteen hundred and twelve; sections one to three, inclusive, of Part III shall take effect on the tenth day of May, nineteen hundred and twelve; the remainder thereof shall take effect on the first day of July, nineteen hundred and twelve. When act takes effect.

#### CHAPTER 311, ACTS OF 1912.

AN ACT TO AUTHORIZE CERTAIN MUTUAL INSURANCE COMPANIES TO TRANSACT THE BUSINESS OF EMPLOYERS' LIABILITY INSURANCE, SO-CALLED.

*Be it enacted, etc., as follows:*

SECTION 1. Section one of chapter two hundred and fifty-one of the acts of the year nineteen hundred and eleven is hereby amended by adding at the end thereof the words:— Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two thirds vote of the policy-holders present and voting at a meeting duly called for that purpose, — so as to read as follows:— *Section 1.* Ten or more persons who are residents of this commonwealth may form an insurance company on the mutual plan to insure any person, firm or corporation against loss or damage on account of the bodily injury or death by accident of any person, or against damage caused by automobiles to property of another, for which loss or damage such person, firm or corporation is responsible. The corporation shall be formed in the manner described in, and be subject to, the provisions of sections fifteen to twenty, inclusive, of chapter one hundred and ten of the Revised Laws, except as is otherwise provided herein. Mutual companies doing business and organized prior to April sixth, nineteen hundred and eleven, to transact employers' liability business may have and exercise all the rights and powers conferred by this section upon companies which may be organized hereunder, but such rights and powers shall not be exercised unless authorized by a two thirds vote of the policy-holders present and voting at a meeting duly called for that purpose. Mutual insurance companies.

SECTION 2. This act shall take effect upon its passage. [Approved March 22, 1912.]

## CHAPTER 666, ACTS OF 1912.

AN ACT RELATIVE TO THE INSURANCE OF COMPENSATION TO  
EMPLOYEES FOR PERSONAL INJURIES RECEIVED IN THE  
COURSE OF THEIR EMPLOYMENT.*Be it enacted, etc., as follows:*

Withdrawal of  
approval by  
insurance  
commissioner.  
See page 512.

SECTION 1. The insurance commissioner may withdraw his approval of any premium or distribution of subscribers given by him to the Massachusetts Employees Insurance Association under the provisions of section seventeen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, or of any premium or rate made by an insurance company and approved by him under the provisions of section three of Part V of said chapter seven hundred and fifty-one as amended by section seventeen of chapter five hundred and seventy-one of the acts of the year nineteen hundred and twelve.

Manner of  
giving notices.  
See page 500.

SECTION 2. The notices required by section five of Part I of said chapter seven hundred and fifty-one shall be given in such manner as the industrial accident board may approve.

SECTION 3. This act shall take effect upon its passage. [Approved May 28, 1912.]

## CHAPTER 807, ACTS OF 1913.

AN ACT TO PROVIDE FOR COMPENSATING CERTAIN PUBLIC EM-  
PLOYEES FOR INJURIES SUSTAINED IN THE COURSE OF THEIR  
EMPLOYMENT.*Be it enacted, etc., as follows:*

Common-  
wealth shall  
and county,  
city, town or  
district may  
pay compensa-  
tion to  
laborers,  
workmen and  
mechanics.

SECTION 1. The commonwealth shall and any county, city, town, or district having the power of taxation, may pay the compensation provided by Part II of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven and acts in amendment thereof and in addition thereto to such laborers, workmen and mechanics employed by it as receive injuries arising out of and in the course of their employment, or, in case of death resulting from any such injury, may pay compensation as provided in sections six, seven and eight of said Part II, and in any amendments thereof, to the persons thereto entitled.

Procedure and  
jurisdiction.

SECTION 2. Procedure under this act and the jurisdiction of the industrial accident board shall be the same as under the provisions of said chapter seven hundred and fifty-one, and the commonwealth or a county, city, town or district which accepts the provisions of this act shall have the same rights in proceed-



ings under said chapter as the association thereby created. The treasurer and receiver general, or the treasurer or officer having similar duties of a county, city, town or district which accepts the provisions of this act, shall pay any compensation awarded for injury to any person in its employment upon proper vouchers without any further authority.

Payment of  
compensation.

SECTION 3. Counties, cities, towns, and districts having the power of taxation, may accept the provisions of this act by vote of a majority of those legal voters who vote on the question of its acceptance at an annual meeting or election as hereinafter provided. In towns and districts which have an annual meeting of the legal voters, this act shall be submitted for acceptance to the voters of the town or district at the next annual meeting after its passage. In cities, and in towns which do not have annual meetings, this act shall be submitted to the voters at the next municipal election, and in counties and in districts which do not have an annual meeting, at the next state election after its passage. At every such election, and at every annual meeting where ballots are used, the following question shall be printed on the ballot:

How provi-  
sions may be  
accepted.

"Shall chapter of the acts of nineteen hundred and thirteen, being an act to provide for compensating laborers, workmen and mechanics for injuries sustained in public employment, and to exempt from legal liability counties and municipal corporations which pay such compensation, be accepted by the inhabitants of this (county, city, town, water district, fire district, etc.) of ?"

Form of  
ballot.

YES.	—
NO.	—

The vote shall be canvassed by the county commissioners, city council or commission, or selectmen, or, in the case of a district, by the district commissioners or other governing board of the district. A notice stating the result of the vote shall be posted in the county court house, or city or town hall, or, in the case of a district, in the public building where the employees of the district are paid. Except as provided in section four, a county, city, town or district which accepts the provisions of this act shall not be liable in any action for a personal injury sustained by a laborer, workman or mechanic in the course of his employment by such county, city, town or district, or for death resulting from such injury.

Notice of  
result of vote.

SECTION 4. A laborer, workman or mechanic entering or remaining in the service of a county, city, town or district, who would, if injured, have a right of action against the county, city, town or district by existing law, may, if the county, city, town or district has accepted the provisions of this act, before he enters its service, or accepts them afterward, claim or waive his right of action as provided in section five of Part I of said chapter seven hundred and fifty-one, and shall be deemed to have waived such right of action unless he claims it. Section

Claim or  
waiver of right  
of action at  
law.

four of said Part I shall apply to actions by laborers, workmen or mechanics employed by a county, city, town or district which accepts the provisions of this act.

Person injured shall elect whether to receive compensation or pension, if entitled to latter.

SECTION 5. Any person entitled to receive from the commonwealth or from a county, city, town or district the compensation provided by Part II of said chapter seven hundred and fifty-one, who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both. In case a person entitled to such compensation from the commonwealth or from a county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation, and any compensation received by him or paid by the commonwealth or by the county, city, town or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under this act.

Act applicable to all laborers, workmen and mechanics.

SECTION 6. This act shall apply to all laborers, workmen and mechanics in the service of the commonwealth or of a county, city or town, or district having the power of taxation, under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. For the purposes of this act all laborers, workmen and mechanics paid by the commonwealth, but serving under boards or commissions exercising powers within defined districts, shall be deemed to be in the service of the commonwealth.

SECTION 7. The provisions of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven, and acts in amendment thereof and in addition thereto shall not apply to any persons other than laborers, workmen and mechanics employed by counties, cities, towns or districts having the power of taxation.

SECTION 8. This act shall take effect upon its passage.  
[Approved June 16, 1913.]

#### CHAPTER 813, ACTS OF 1913.

#### AN ACT RELATIVE TO INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES.

*Be it enacted, etc., as follows:*

Joint board to investigate employments.

SECTION 1. The state board of labor and industries and the industrial accident board, sitting jointly, shall investigate from time to time employments and places of employment within

the commonwealth, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all such employments or places of employment; and also shall determine what suitable devices or other reasonable means or requirements for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments or places of employment; and shall make reasonable rules, regulations and orders for the prevention of accidents and the prevention of industrial or occupational diseases in such employments or places of employment. Such rules, regulations and orders may apply to both employer and employee.

Prevention of accidents and occupational diseases.

SECTION 2. Before the adoption of any rule or regulation by the said joint board a hearing shall be given, and not less than ten days before the hearing a notice thereof shall be published in at least three newspapers, of which one shall be published in the city of Boston. Such rules, or regulations shall upon adoption be published in like manner, and shall take effect thirty days after such publication, or at such later time as the board may fix. Before the adoption of any order a hearing shall be given thereon, of which a notice of not less than ten days shall be given to the individuals, firms, corporations or associations affected thereby.

Hearing before adoption of regulation.

SECTION 3. The joint board may appoint committees, on which employers and employees shall be represented, to investigate and recommend rules and regulations.

Appointment of committees.

SECTION 4. The joint board shall make such general arrangements between the two boards as will prevent duplication of effort but the inspection and investigation carried on by the state board of labor and industries shall be a regular and systematic inspection and investigation of all places of employment and the conditions of safety and health pertaining thereto, and the inspection and investigation carried on by the industrial accident board shall be that relating to causes of injuries for which compensation may be claimed.

To prevent duplication of inspection and investigation.

SECTION 5. Any member or employee of either board may enter any place of employment for any purpose under this act at any time when the place of employment is being used for business purposes.

Right to enter places of employment.

SECTION 6. The joint board may require every physician treating a patient whom he believes to be suffering from any ailment or disease contracted as a result of the nature, circumstances or conditions of the patient's employment to report such information relating thereto as it may require, within such time as it may fix, to the state board of labor and industries, and it may issue a list of such diseases which shall be regularly reported upon by physicians and may add to or change such list at any time. Copies of all such reports and all statistics and data com-

Physicians may be required to report diseases.

piled therefrom shall be kept by the state board of labor and industries, and shall be furnished on request to the industrial accident board and the state board of health.

Hearings open  
to the public.

SECTION 7. All hearings by the joint board shall be open to the public. The chairman of the state board of labor and industries and the chairman of the industrial accident board shall act alternately as chairman of the joint board, and the said board may designate one of the employees of either board to act as secretary.

Amendment  
to section 8,  
chapter 726,  
Acts of 1912.

SECTION 8. Section eight of chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve is hereby amended by adding at the end of the first paragraph thereof the words:— or persons especially qualified by technical education in matters relating to health and sanitation.

Industrial  
Accident  
Board  
inspectors.

SECTION 9. The industrial accident board may appoint and remove not more than six inspectors, subject to the laws relating to the appointment and removal of employees in the classified civil service. They shall be required to pass examinations of a comprehensive and practical character based upon the particular requirements of the kinds of work to be done, shall be graded in such manner as the board may deem expedient, and shall receive such salaries as the board, with the approval of the governor and council, may fix.

Joint board  
rules or  
regulations  
control.

SECTION 10. If any rule or regulation made under authority of section eighteen of Part IV of chapter seven hundred and fifty-one of the acts of the year nineteen hundred and eleven conflicts with or differs from a rule or regulation of the joint board, the rule or regulation of the joint board shall prevail.

Annual ap-  
propriation.

SECTION 11. There may be expended annually by the joint board in carrying out the provisions of this act such sums as the general court may appropriate. The joint board shall annually submit to the auditor of the commonwealth such statements of estimates to cover its expenses as are required by section three of chapter seven hundred and nineteen of the acts of the year nineteen hundred and twelve.

Meaning of  
terms and  
phrases.

SECTION 12. The following terms and phrases, as used in this act, shall have the following meanings:—

"Employ-  
ment."

(a) The term "employment" shall mean and include any trade, occupation or branch of industry, any particular method or process used therein, and the service of any particular employer; but shall not include private domestic service or service as a farm laborer.

"Place of em-  
ployment."

(b) The phrase "place of employment" shall mean and include every place whether indoors or out or underground and the premises appurtenant thereto, into, in or upon which any employee goes or remains either temporarily or regularly in the course of his employment.

(c) The terms "safe" and "safety", as used in this act, shall be held to relate to such freedom from danger to the life, safety and health of employees as the nature of the employment will reasonably permit. "Safe" and "safety."

(d) The terms "industrial disease" and "occupational disease" shall mean and include any ailment or disease caused by the nature, circumstances or conditions of the employment. "Industrial" or "occupational disease."

SECTION 13. Whoever violates any reasonable rule, regulation, order or requirement made by the joint board under authority hereof, shall be punished by a fine of not more than one hundred dollars for each offence. Violation of regulations.

SECTION 14. All acts and parts of acts inconsistent herewith are hereby repealed; but this provision shall not be construed to take away any of the existing powers of the industrial accident board, the board of railroad commissioners, the state board of health, the board of boiler rules, the boiler inspection department of the district police, or the building inspection department of the district police, or any power given to the state board of labor and industries by chapter seven hundred and twenty-six of the acts of the year nineteen hundred and twelve. All acts inconsistent herewith repealed.

SECTION 15. This act shall take effect upon its passage.  
[Approved June 16, 1913.]

## RULES ADOPTED BY INDUSTRIAL ACCIDENT BOARD.

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### RULE No. 1.

#### *Manner of giving Notice by Employer of Acceptance of the Act.*

If personal service is not made of the notices required by sections 20 and 21 of Part IV, chapter 751 of the Acts of 1911, and the amendments thereto, said notices may be given by posting the same at one or more of the principal entrances to the factory, shop or place of business of the employer, and in each room where labor is employed; said notices to be printed or typewritten.

#### *Supplement to Rule 1.*

It has been represented to the Industrial Accident Board that it is possible that employees may be engaged for labor away from the office or headquarters of the subscriber, or may be employed in more than one place or office, and that in these cases personal notice is not always possible or practical. To meet this situation the Board has passed the following supplement to Rule No. 1:—

Where the same employees are employed in more than one room in a building, or in various places, or where employers are engaged in such business as that of managing office buildings, and personal service of the notices required by sections 20 and 21, Part IV, chapter 751 of the Acts of 1911, and amendments thereto, is not made, said notices can be served by posting the same at one or more of the principal entrances to each building so managed, or where labor is employed, or by posting the same in a conspicuous place near any time clock or other registering device which employees in any such building are required to use, or by posting the same at the entrance to the office of the janitor of said building, or by posting the same at the place where the employee is hired.

### RULE No. 2.

#### *Manner of giving Notice by Employee to Employer.*

In each instance the notice shall be served upon the employer, or upon one employer if there are more employers than one, or upon any officer or agent of a corporation if the employer is a corporation, by delivering the same to the

person on whom it is to be served, or by leaving it at his residence or place of business, or by sending it by registered mail addressed to the person or corporation on whom it is to be served, at his last known residence or place of business. (Section 5, Part I, chapter 751 of the Acts of 1911, and amendments thereto.)

RULE No. 3.

*Report of Accidents by Association or Insurance Companies to the Board.*

That the association and liability insurance companies report to it all accidents within five days after receipt of notice thereof by them from any subscriber, by sending to the Industrial Accident Board a list or brief statement of the same.

RULE No. 4.

*Additional Copy of Employee's Claim for Compensation to be sent to Insurance Association or Company.*

An employee making a claim for compensation under this act shall furnish the association or insurance company against whom said claim is made with a copy thereof by mail or otherwise forthwith, upon the filing of the same with the Industrial Accident Board. This rule shall be without prejudice to any rights acquired by the filing of said claim with the Board under the provisions of Part II, section 23, chapter 751 of the Acts of 1911, and amendments thereto, or by other provisions of said act.

RULE No. 5.

*Insurance Association and Companies to notify Industrial Accident Board of Employers who insure or cease to insure.*

That the insurance association and all liability insurance companies shall notify the Industrial Accident Board of the names and addresses of all employers who insure their liability under the workmen's compensation act, notice to be given forthwith upon the issuance of such insurance and a further notice to be given when employers cease to be so insured.

RULE No. 6.

*Agreements between the Insurer and Employee.*

Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board: (Section 20, Part II, and sec-

tions 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.)

The above paragraph of this rule shall be written or printed at the head of every agreement regarding compensation, and of every receipt taken by the insurer from the employee.

RULE No. 7.

*Employer to file Notice of Insurance with the Board.*

Every employer shall file with the Industrial Accident Board a copy of the form of notice, including the signature thereto, which he has given to his employees that he has insured under this act.

RULE No. 8.

*Employer to notify Employees of Change of Insurer.*

Every employer shall notify his employees of any change of insurer by serving or posting a new "notice to employees," stating the name of the new insurance company or association insuring his liability under this act, and filing a copy of such notice with the Industrial Accident Board.



## FORMS ADOPTED BY INDUSTRIAL ACCIDENT BOARD.

FORM No. 1.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

### *Notice to Employees.*

As required by chapter 751 of the Acts of 1911, Commonwealth of Massachusetts, and amendments thereto, entitled "An Act relative to payment to employees for personal injuries received in the course of their employment, and to the prevention of such injuries."

This will give you notice that I (we) have provided for payment to our injured employees under the above act by insuring with the .....

Insurance Co.

Insert address of company here.

Date .....

Name of employer.

Address .....

City or town.

Street and number.

FORM No. 2.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

### *Notice of Claim of Common Law Rights.*

.....191 .

To .....

Name of employer.

This is to notify you that I claim my right of action at common law to recover damages for personal injuries. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

Signature of employee.

Address, .....

City or Town, Street and No.

FORM NO. 3.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Notice of Waiver of Rights under Common Law previously claimed.*

To ..... 191.  
..... Employer.

This is to notify you that I waive my rights under the common law previously claimed by former notice, and now claim my rights under the workmen's compensation act. This notice is given to you under the Acts of 1911, chapter 751, section 5, Part I, and amendments thereto.

.....  
Signature of employee.

Address, .....  
City or town, street and No.

FORM NO. 4.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

Whenever any weekly payment has been continued for not less than six months, the liability therefor may in unusual cases be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of the Industrial Accident Board. (Section 22, Part II, chapter 751, Acts of 1911, and amendments thereto.)

*Agreement for redeeming Liability by Payment of Lump Sum.*

Received of .....  
Name of insurer.

the lump sum of ..... dollars  
and ..... cents, making in all, with weekly payments already  
received by me, the total sum of ..... dollars  
and ..... cents, a weekly payment having been continued  
for not less than six months. Said payments are received in redemption of the  
liability for all weekly payments now or in the future due me under the Mass-  
achusetts Workmen's Compensation Act, for all injuries received by me on or  
about the ..... day of ....., 191..., while in the employ  
of ....., subject to

Name of employer and address.  
the approval of the Industrial Accident Board.

Witness my hand this ..... day of ....., 191..

Witness .....  
Name. Name of employee.

Address .....  
City or town. City or town.

.....  
Street and number. Street and number.

FORM No. 5.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Notice that an Employer has ceased to be a Subscriber.*

Section 21, Part IV, chapter 751, Acts of 1911, as amended by section 16, chapter 571, Acts of 1912, provides that when an employer ceases to be a subscriber, he shall, on or before the day on which his policy expires, give notice thereof in writing or print to all persons under contract of hire with him, and he shall file a copy of said notice with the Industrial Accident Board. In case of the renewal of the policy, no notice is required. Following is the form:—

*Notice.*

This is to give you notice that I (we) have ceased to be a subscriber in any insurance company, under chapter 751, Acts of 1911, and amendments thereto, and that the policy formerly held by me expired..... or is to expire.....

.....  
Name of employer.

Address, .....  
City or town, street and No.

FORM No. 6.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Notice to Industrial Accident Board that an Injured Employee has refused to submit Himself to an Examination.*

You are hereby notified that.....  
Name of employee.

.....  
Street and No. City or Town.  
who was injured on or about.....while in the employ of.....  
Date

.....at.....  
Name of employer. Place.

has refused to submit himself to an examination, as required under the provisions of section 19, Part II, chapter 751 of the Acts of 1911, and amendments thereto.

.....  
Name of insurance association or company.

Per.....191  
City.

FORM NO. 7.

WORKMEN'S COMPENSATION ACT.

## THE COMMONWEALTH OF MASSACHUSETTS.

INDUSTRIAL ACCIDENT BOARD,  
 ROOMS 201-208, PEMBERTON BUILDING,  
 12 PEMBERTON SQUARE, BOSTON, MASS.

*Notice to Employee from Industrial Accident Board relative to his Refusal to  
 submit Himself to an Examination.*

To .....

.....  
                                 Street and No.                                City or town.

The .....  
                                 Name of insurance company.

has notified the Industrial Accident Board, under date of.....  
 191.., that you have refused to submit yourself for examination, as required by  
 section 19, Part II, chapter 751, Acts of 1911, and amendments thereto. Your  
 attention is called to the terms of the act which provides:—

“After an employee has received an injury, and from time to time thereafter  
 . . . he shall . . . submit himself to an examination by a physician or surgeon  
 . . . furnished and paid for by the association or subscriber. The employee  
 shall have the right to have a physician provided and paid for by himself present  
 at the examination. If he refuses to submit himself for the examination, or in  
 any way obstructs the same, his right to compensation shall be suspended,  
 and his compensation during the period of suspension may be forfeited.”

INDUSTRIAL ACCIDENT BOARD,

By.....

Form No. 8.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and Rule No. 6 adopted by the Board.)

....., Employee.  
....., Insurer.

*Agreement in Regard to Compensation.*

We, ....., residing at....  
Name and address of injured employee.  
city or town of .....and the  
.....  
Name and address of insurance association or company.  
have reached an agreement in regard to compensation for the injury sustained  
by said employee while in the employ of .....

Here insert name and address of employer.  
Here insert the time, including hour and date of accident, the place where it occurred, the nature and cause of injury, and other cause or ground of claim.

The terms of the agreement follow:

(Here state the sum per week agreed upon subject to the terms of the Act.)

..... Witness.	..... Name of injured employee.
..... City or town, street and number.	..... Name of insurance association or company.

Form No. 9.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Note.* — This claim is to be filed with the Industrial Accident Board and may be sent by mail; at the time of filing, a copy thereof should also be sent by the employee to the insurance association or company. The claim should be made within six months after the occurrence of the injury. (Chapter 751, Part II, section 15, and section 23, as amended by Acts of 1912, chapter 571, section 5.)

*Claim for Compensation for Injury.*

This is to notify you .....  
 Name of association or company with which employer is insured.  
 that I claim compensation from you under the workmen's compensation act,  
 chapter 751, Acts of 1911, and amendments thereto, for personal injury sus-  
 tained while in the employ of.....  
 Name of employer. Street and number.  
 City or town. The time of my injury was .....  
 Here state date and time of day as near as possible.  
 The place of injury was.....  
 State name or description of building, or place, where injury was sustained.  
 The cause<sup>1</sup> of my injury was.....  
 Describe cause of injury.  
 The nature of my injury is as follows:.....  
 Describe injury with such exactness as possible.  
 Signature of injured employee.  
 Street and number.  
 City or Town.  
 Date of making this claim.

<sup>1</sup> If it is claimed that the injury was caused by the serious and wilful misconduct of the employer, or of any person regularly entrusted with or exercising the powers of superintendence, it is requested that it be stated in this claim for compensation, setting forth in the alleged cause, in general terms, what the serious and wilful misconduct of the employer or superintendent consisted.

Section 14 of Part III of this act provides that if any proceedings are brought, prosecuted or defended under this act without reasonable ground, the whole cost of the proceedings shall be assessed upon the party who has so brought, prosecuted or defended them.

**WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.**

### Notice of Injury.

**WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.**

### *Report of Committees of Arbitration.*

(Here will follow report.)

FORM No. 12.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Application for Review of Claim before Full Board.*

*To the Industrial Accident Board, Boston, Mass.*

The undersigned, as provided in Part III, sections 7 and 10, chapter 751 of the Acts of 1911, and amendments thereto, makes application for a review of the findings of the Committee of Arbitration in the claim of.....

This claim for a review is based on the following grounds:—

.....

.....

..... 191...

*Note.* — “No party shall as a matter of right be entitled to a second hearing on any *matter of fact.*”

FORM No. 13.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

*Notice assessing Cost of Proceedings before Arbitration Committee upon Party prosecuting or defending Same without Reasonable Grounds.*

....., Employee.  
....., Insurer.

To .....

You are hereby notified that the proceedings before the.....

.....  
Industrial Accident Board, or Arbitration Committee, as case may be.  
on the above-entitled claim, have been determined by said Committee, or Board,  
to have been.....by you without reasonable grounds, and

.....  
Prosecuted or defended.  
that the costs, amounting to \$:....., are assessed against you.

Respectfully,

INDUSTRIAL ACCIDENT BOARD,  
or ARBITRATION COMMITTEE,

By .....



FORM NO. 14.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

Every agreement in regard to compensation is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and rule adopted by the Board.)

*Receipt on Account of Compensation.*

Received of .....  
Name of insurer.  
the sum of.....dollars,  
and.....cents, being the proportion of my weekly wages for the  
period from the.....day of....., 191.., to the.....  
day of....., 191.., under the Massachusetts Workmen's Com-  
pensation Act, subject to review by the Industrial Accident Board.  
\$.....

.....  
Employee.  
.....  
Street and No.  
.....  
City or Town.

Form No. 15.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

Every agreement in regard to compensation under this act is subject to approval by the Industrial Accident Board, and a memorandum of the same must be filed with the Board, whether said agreement is written or oral, and whether it is made by one or both parties, or in the form of a receipt. Any weekly payment or settlement under the act, whether purporting to be final or otherwise, may be reviewed by the Board. (Section 20, Part II, and sections 4 and 12, Part III, chapter 751 of the Acts of 1911, and amendments thereto, and Rule No. 6 adopted by the Board.)

*Settlement Receipt.*

Received of.....  
Name of insurer.

the sum of.....dollars  
and.....cents, making in all, with weekly payments already  
received by me, the total sum of.....dollars  
and.....cents, in settlement of compensation under the Massa-  
chusetts Workmen's Compensation Act, for all injuries received by me on or  
about the.....day of....., 191.., while in the employ of

.....  
Name of employer, city or town, street and number.  
subject to approval and review by the Industrial Accident Board.

Witness my hand this.....day of....., 191...  
Witness.....  
Name.....Name of employee.  
Address.....  
Street and number.....Street and number.  
.....  
City or town.....City or town.

FORM NO. 18.

WORKMEN'S COMPENSATION ACT  
INDUSTRIAL ACCIDENT BOARD  
BOSTON, MASS.

....., Employee.  
....., Insurer.

*Notice of Failure of Parties to reach an Agreement.*

*To the Industrial Accident Board, Boston, Mass.*

I ....., respectfully notify  
Name of party giving notice.  
you in accordance with section 5, Part III, of said act, that the above-named  
parties have failed to reach an agreement in regard to compensation, and re-  
quest a committee of arbitration.

.....  
Name of party giving notice.  
.....  
Address, street and number, city or town.  
.....  
Date of notice.



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